

COMPETITOR GROUP RACING AGREEMENT

This Agreement is entered into this 19th day of November, 2015, by and between the City of San Antonio, a municipal corporation of the State of Texas (hereinafter referred to as "City") and Competitor Group, Inc. (hereinafter referred to as "Competitor Group").

WHEREAS, City and San Antonio Sports partner to bring many important sporting events to San Antonio and they have and will continue to partner on the Rock N Roll Marathon; and

WHEREAS Competitor Group desires to produce and conduct a Marathon and Marathon-related events on streets located within the municipal boundaries of City; and

WHEREAS City owns, operates and maintains the public streets within the corporate boundaries of the City and possesses the authority to provide the exclusive use of the public rights of way required for the Marathon Event described herein for limited periods of time at definite locations and retaining the right to revoke the privilege upon certain conditions; and

WHEREAS Competitor Group desires to stage the Marathon and Marathon-related events in a manner that will provide international media exposure to City, attract destination visitors to City during the Marathon that will result in higher hotel occupancy and restaurant visitation, and generate positive community relations; and

WHEREAS City and Competitor Group have determined that it is in their mutual interest to permit the production of the Marathon on streets of City and desire to enter into this Agreement,

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, City and Competitor Group agree as follows:

1. Definitions.

As used in this Agreement, the terms defined in this Article shall have the following meanings unless the context clearly otherwise requires:

- a. "Agreement" means this Agreement including all exhibits, schedules, amendments, and supplements attached hereto.
- b. "Augmented Marathon Period" means, with respect to each Marathon Event, the period of time commencing twenty-four (24) hours before and ending twelve (12) hours after the applicable Marathon Period in which Competitor Group shall be allowed to set up and dismantle the facilities and apparatus associated with the Marathon Event in the Staging Area, including, but not limited to, the route equipment designated for the event.
- c. "City Manager" means the City Manager of the City or her designee.
- d. "City Representatives" means the individuals from the Center City Development

Office, Police, Fire, Park Police, Center City Development Office, Solid Waste, Parking, Parks and Recreation, Convention and Visitors Bureau, Convention and Sports Facilities, Transportation and Capital Improvements, Animal Care, and all required City departments who will serve as the points of contact for Competitor Group on issues related to their respective Departments.

e. "City Services" means types and levels of services customarily provided by cities hosting similar events, taking into account the size and nature of the crowd and event.

f. "City Streets" means the streets (including the sidewalks, medians, and landscaping located therein), and other public rights of way owned or leased by City within the Marathon Area as more fully identified in the Detailed Race Plans.

g. "Detailed Race Plans" means printed detailed race information, to be prepared by Competitor Group, which shall include, but not be limited to, route maps, safety matters, security, schedules and procedures for the installation, construction, operation and removal of Marathon Materials, traffic management, parking management, community relations and notification, services provided by and paid for by Competitor Group and City pursuant to the Agreement, and other matters mutually determined by Competitor Group and the City. The Detailed Race Plans, once submitted by Competitor Group as required by Section 5(i), shall be attached to this Agreement as Exhibit A and incorporated herein.

h. "Effective Date" means the date following the execution of this Agreement by Competitor Group upon which a representative of the City executes this Agreement.

i. "Marathon Area" means the real property area within the Route as set forth in Exhibit A, including but not limited to the City Streets and any adjoining City property on which official Marathon Event activity will occur or materials reside.

j. "Marathon Event" means the Marathon, Half Marathon, 10K, 5K, Half Marathon Relay, children's run, the associated health and fitness expo and incidental and related events within the Marathon Area during the related Marathon Period. Additional events may be added, or existing events modified, at Competitor Group's discretion and in the event added, will be considered part of the applicable Marathon Event.

k. "Marathon Event Damages" means the damages to the Marathon Area resulting from the Marathon Event, the repair of which are necessary to return the property to its normal use, including, without limitation, damages caused by Marathon vehicles, equipment and structures, and generator fuel and oil contamination, but excluding, in any case, normal wear and tear.

l. "Marathon Materials" means, without limitation, all equipment, materials, and apparatus associated with the conduct of the Marathon Event within the Route Area which is provided by Competitor Group including barriers, barricades, traffic control devices, blockades, cable (electrical and other), safety equipment and devices, fencing, fence covering

material, signage, broadcasting equipment, credentials trailer, registration booths, vehicles, tents, cranes, forklifts, fire protection equipment and apparatus, medical equipment and apparatus, bleachers/viewing stands, seats, wiring, banners, structures and components thereof.

m. "Marathon Period" means that period of time commencing at 6:00 AM on the Friday preceding Marathon Day and, ending at 6:00 A.M. on the Monday morning following such Marathon Day, or, in the event that adverse weather conditions cause a delay in staging the related Marathon Event (with the rescheduling of such Marathon Event to be on the next available day as determined by Competitor Group and City, or on such other date as is mutually agreed upon by Competitor Group and City), ending at 6:00 A.M. on the morning following the conclusion of such Marathon Event or at a time mutually agreed upon by Competitor Group and City.

n. "Mayor" means Mayor of the City.

o. "Moratorium Period" means that period of time commencing twenty-four (24) hours prior to the commencement of the applicable Augmented Marathon Period and ending with the conclusion of such Augmented Marathon Period.

p. "Participants" means the organizations and personnel directly involved in the production and carrying out of the Marathon Event, such as equipment providers, race sponsors, and supporting personnel including contract staff, as well as race participants.

q. "Private Property" means any real property within the Marathon Area not owned or leased by the City.

r. "Route" means the surface over the specific route through the City Streets over which the Marathon Event shall be conducted and includes all parts of the Marathon circuit, the specifics of which may be changed from time to time during contract period with the permission and cooperation of the City.

s. "Spectator" means each person or those people, other than Participants, within the Marathon Area for the purpose of viewing a Marathon Event.

t. "Street Repairs" means the restoration and repair determined necessary by the City that must be made to the City Streets, including medians, sidewalks and landscaping after the conclusion of each Marathon Event in order to return the City Streets to their normal use by the public.

2. Premises.

a. City represents that it has the right and authority to grant the rights and privileges set forth herein, but only with respect to City Streets. City expressly disclaims any authority to affect Private Property rights of property owners or holders of property interests within the Marathon Area, and this Agreement shall not be otherwise construed to affect the same.

- b. None of the rights herein granted to Competitor Group are, nor shall they be construed as, a lease, easement, or other interest in land.

3. Term of Agreement.

The term of this Agreement shall commence on the Effective Date and cover the 2016, 2017, 2018, 2019 and 2020 Marathon Events, with a mutual two-year extension period covering the 2021 and 2022 Marathon Events, unless earlier terminated in accordance with Articles 13 or 14 of this Agreement. If this Agreement is to be extended, the parties shall enter a written agreement for the two-year extension within 60 days of the 2020 Marathon Event. Any reference herein to the term of this Agreement shall, unless otherwise indicated, mean the term of the original Agreement and any extension thereto.

4. Use and Occupancy; Exclusivity.

Competitor Group, subject to all of the terms and conditions of this Agreement and to the extent authorized by law, shall have:

- a. During the Augmented Marathon Period, the exclusive right to install and remove equipment and to construct, place or otherwise locate Marathon Materials within the Marathon Area, except for the portions of the Marathon Area already subject to lease, agreement, other rights extended by the City, or that are Private Property. Motor and pedestrian traffic may be disrupted temporarily during the Augmented Marathon Period with the prior permission of the City Manager, as set forth in the Detailed Race Plans. Marathon Materials shall be removed from all areas within the Marathon Area by the end of the Augmented Marathon Period.
- b. During each Marathon Period, the exclusive right to produce and conduct the Marathon Event in the Marathon Area.

In addition, during the term of this Agreement, the City covenants and agrees that it will not, without Competitor Group's prior written consent, enter into any agreement, understanding or contract, or grant any permits, for a half marathon running event in the City or its vicinity to be held during the 90 days prior to or the 60 days after each Marathon Event held pursuant to this Agreement. Further, the City covenants and agrees that it will not, without Competitor Group's prior written consent, enter into any agreement, understanding or contract, or grant any permits, for a full marathon running event in the City or its vicinity to be held during the 120 days prior to or the 90 days after each Marathon Event held pursuant to this Agreement. Additionally, it is the understanding and intent of the parties to exempt up to three half marathons or training races supported or created by San Antonio Sports ("Exempted Events") from the restrictions set forth in this paragraph. Further, it is the understanding and intent of the parties that in the event that one or more of these Exempted Events undergoes a change in ownership or management (e.g. if an Exempted Event is sold or partnered), Competitor Group shall have the right of first refusal to bid on such Exempted Event(s).

5. Competitor Group Covenants.

Competitor Group covenants and agrees that, during the term hereof, it will:

- a. Use the Marathon Area only for the purposes of the Marathon Event(s), and other Marathon-related activities and only at the time and in the places expressly permitted in this Agreement or as otherwise permitted by the City Manager not inconsistent with this Agreement. City reserves and has exclusive rights to the use and occupancy of the City Streets at all times except as expressly permitted to Competitor Group herein.
- b. Produce the Events and other Marathon-related activities with respect to each Marathon Event in the Marathon Area each year of the term hereof, on the days and dates as determined hereunder.
- c. Restrict all of its activities under this Agreement to the City Streets and any other property to which, or in which, it secures privileges.
- d. Obtain a release and waiver of liability or an appropriate indemnity agreement in favor of the City from all registered participants and volunteers.
- e. Pay all invoices received from City within 30 days of receipt.
- f. Pay, at its sole expense, the Marathon Event Damages resulting from each Marathon Event within 30 days of receiving an invoice from the City.
- g. Provide and install at its sole expense the Marathon Materials not otherwise provided by the City in connection with the City Services.
- h. At its sole expense, provide adequate portable toilets and related sanitation services for the use of the Participants and Spectators during each Marathon Period within the Marathon Area. Instruct all appropriate parties to take standard industry measures to prevent the spillage of waste or pollutants, including fuel and motor oil, into the storm drains.
- i. Submit, no later than September 1 of each Marathon Event year, Detailed Race Plans for the next scheduled Marathon Event that will include detailed route maps that include block-by-block locations of music stages, water stations, portable toilets and any other equipment or material brought into the right-of-way expressly for the races. The City will have final approval of the Detailed Race Plans. The deadline for submission of the Detailed Race Plans may be extended by the City in its sole discretion. If the deadline is extended, the deadline for City approval set forth in Section 6(c) shall also be extended accordingly. The Detailed Race Plans shall also include:
 1. Traffic Plan. Working in conjunction with City, provide a traffic management plan containing approval from the Texas Department of Transportation, VIA, San Antonio Police Department, Public Works Traffic Division and any other

necessary entities.

2. Notification Action Plan. Develop and implement a Notification Action Plan which shall include maintenance of an ongoing priority contact database, including key impacted businesses and organizations along the route, including churches, private businesses, apartment and condo complexes. Over the course of 90 days leading up to the Marathon Event, Competitor Group shall make contact with representatives from the priority contact list to confirm race date, route and access, delivering copies of road closure material and scheduling presentations and meetings, as needed and desired by entities on the priority contact list. Competitor Group shall produce and distribute a written notification of the event details, including traffic restrictions, approximately 30 days before the event, to surrounding neighborhoods, businesses, and churches within a minimum of one quarter mile radius from the route. A contact name, or names, representing Competitor Group, and corresponding phone, cellular, or pager number must be included in all notifications. Competitor Group shall list road restrictions and closures and alternate directions to navigate around road closures on web-site information. Competitor Group shall provide similar road closure information to media outlets and encourage them to include this information in event listings, advisories and public service announcements (PSAs) throughout the two week period prior to the event. Competitor Group shall respond to public complaints on a timely basis to provide clarification and understanding of road closures to the public, in an attempt to find a satisfactory resolution. Competitor Group shall maintain a record of notification efforts, specifying location, method and date that shall be provided to the City upon request.

j. Competitor Group acknowledges that it shall be responsible for providing adequate security within the Marathon Area by employing off-duty police officers and for paying the costs of such services in advance of each Marathon Event. City shall assist Competitor Group in making the arrangements for such services through SAPD and its Off-Duty Employment Office, however for purposes of the Fair Labor Standards Act (FLSA), City and Competitor Group shall at all times remain separate and independent employers and Competitor Group will be billed, in advance, directly from the San Antonio Police Department Off-Duty Employment Unit for estimated costs associated with employing security personnel for each Marathon Event.

k. Operate each Marathon Event in material compliance with all applicable federal, state and City laws and regulations, including applicable zoning ordinances, subject to applicable permits, if any.

l. Not prevent reasonable access to private or public facilities per approved Traffic Plan.

m. Working in conjunction with City, obtain all barricades necessary for each Marathon Event and provide for their timely removal in accordance with the Traffic Plan.

- n. Actively facilitate and assist with coordinating all City services including, but not limited to, sanitation services, fire and emergency medical related services, law enforcement, Parks and Recreation Department assistance, water services and security services in accordance with this Agreement. A representative of Competitor Group shall be present at all event coordination meetings as deemed necessary by the City for effective Marathon Event planning and implementation.
- o. Coordinate with designated City Representative on all efforts for each Marathon Event.
- p. Provide a parking plan (and/or shuttle plan if deemed necessary by CGI) to all Marathon Events sufficient to meet the needs of the Event and provide the plan to City for review at least 30 days prior to each Marathon Event.
- q. Provide Emergency Medical Service Plan at least 30 days prior to each Marathon Event to include entity providing the service and approval from the San Antonio Fire Department.
- r. Obtain a parade permit from the San Antonio Police Department at least 30 days prior to each Marathon Event.
- s. Submit documentation of written approval verifying use of private and non-city owned facilities/property to be utilized during event (i.e. band/water stations, etc.) to City Representative at least 30 days prior to each Marathon Event.
- t. Obtain all permits for facility rentals, health, fire, police, electrical, etc. and provide evidence of such permits to City Representative prior to the start of each Marathon Event.
- u. Be responsible for all expenses associated with Police, Fire, Park Police, Center City Development Office, Solid Waste, Parking, Parks and Recreation, Convention and Sports Facilities, Transportation and Capital Improvements, Animal Care, and all other services and City resources required to stage the Marathon Event to the extent they are required under this Agreement (direct and those billed by City).
- v. Implement and submit “green initiatives” throughout the Marathon Events that support the City’s Mission Verde Sustainability Plan, including recycling and clothing donation.
- w. Provide a concert at the Marathon finish line, at its sole expense.

6. City Covenants.

City covenants and agrees that, during the term hereof, it will:

- a. Use its best efforts to assist Competitor Group in obtaining permits and licenses from the City and other governmental entities necessary for Competitor Group to take

full advantage of its privileges under the Agreement, upon normal application and qualification by Competitor Group.

b. At least 30 days prior to the date of approval of the Detailed Race Plans and continuing until commencement of the Moratorium Period, notify Competitor Group of planned developments within, on, or adjacent to, the Marathon Area that may, in the City's reasonable opinion, affect Competitor Group's planning and staging of any Marathon Event or other Marathon related activity. Notwithstanding the foregoing, when City becomes aware of any planned development within, on, or adjacent to, the Marathon Area that the City believes may affect Competitor Group's planning and staging of any Marathon Event, submit nonconfidential information of which it is aware to Competitor Group.

c. Approve the Detailed Race Plans, in writing, at least 30 days prior to each Marathon Event. If necessary, City and Competitor Group shall work together to revise said Plans in order for City to issue such approval.

d. Require any essential changes to the Detailed Race Plans, following the approval provided for above, or make additional requirements for any Marathon Event after reasonable consultation with Competitor Group.

e. Appoint City's Representatives for the purpose of facilitating the development of each Marathon Event. City's Representatives shall be authorized to act on behalf of their respective departments, in order to promptly address issues arising in connection with the Marathon Event so that the resolution of such issues do not unnecessarily impede the progress of such Marathon Event.

f. For each year of the Agreement, provide to Competitor Group as an attachment to this Agreement an official updated estimate of the cost of Police, Fire, Center City Development, Solid Waste, Parks and Recreation, Transportation and Capital Improvements and other services and City resources required to stage the Marathon Event. After the Marathon Event, determine the actual cost of such services required to stage the Marathon Event and if the actual cost exceeds the estimated cost due to requests or changes by Competitor Group, Competitor Group will reimburse the City the difference within 30 days of the receipt of an invoice.

g. City Facilities. Make available facilities for each Marathon Event under the terms of the Alamodome and Henry B. Gonzalez Convention Center License Agreements, which are attached to this Agreement and incorporated herein as Exhibits B and C, respectively.

h. Ancillary Facilities. City shall invoice the Competitor Group accordingly for its use of City parks and other ancillary facilities necessary for each Marathon Event.

i. Sponsorship Agreement. City's Convention and Visitors Bureau shall develop a Sponsorship Agreement for each Marathon Event through its advertising agency of

record. Upon its completion, it shall be attached to this Agreement and incorporated herein as Exhibit D.

7. Entry and Inspection.

Notwithstanding any other term or condition of this Agreement, City reserves, and shall have the right at all reasonable times and upon reasonable notice, to enter the Marathon Area for the purpose of viewing and ascertaining the condition of the same, to protect its interest in the Marathon Area, to inspect the operations conducted thereon, or for public safety or Marathon Event management purposes. If City finds, in its sole discretion, upon such entry or inspection by the City, that the Marathon Area is not in a safe or satisfactory condition, City shall have the right to cause Competitor Group to correct any unsafe or unsatisfactory condition created by Competitor Group or its operation of the Marathon Area. City emergency vehicles shall have access at all times to the Marathon Area for the purpose of protecting life and property, and shall use best efforts to coordinate such access with Competitor Group.

8. Indemnification.

COMPETITOR GROUP covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of 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 CITY directly or indirectly arising out of, resulting from or related to COMPETITOR GROUP'S activities under this AGREEMENT, including any acts or omissions of COMPETITOR GROUP, any agent, officer, director, representative, employee, consultant, subcontractor or vendor of COMPETITOR GROUP, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT COMPETITOR GROUP 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 THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

COMPETITOR GROUP shall promptly advise CITY in writing of any claim or demand against CITY or COMPETITOR GROUP known to COMPETITOR GROUP related to or arising out of COMPETITOR GROUP'S activities under this

AGREEMENT.

Defense Counsel - CITY shall have the right to approve defense counsel to be retained by COMPETITOR GROUP in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. COMPETITOR GROUP shall retain defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Agreement. If COMPETITOR GROUP fails to retain counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and COMPETITOR GROUP 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.

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

9. Insurance

Prior to the commencement of any work under this Agreement, Competitor Group shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Downtown Operations Department, which shall be clearly labeled "**2016-2020 Rock 'N' Roll San Antonio Marathon Events**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Downtown Operations Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

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 contract. In no instance will City allow modification whereupon City may incur increased risk.

A contractor's financial integrity is of interest to City; therefore, subject to Competitor Group's right to maintain reasonable deductibles in such amounts as are approved by City, Competitor Group shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Competitor Group'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:

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General Liability Insurance (Broad Form) to include coverage of limits of \$2,000,000 aggregate with \$1,000,000 per occurrence for the following: a. Premises operations b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual liability	
3. Business Automobile Liability Insurance with combined single limit coverage of \$500,000. For: (1) Owned/leased vehicles (2) Non-owned vehicles (3) Hired vehicles	

As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page 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). Competitor Group 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. Competitor Group 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

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

- Name City and 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 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 City where City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and auto liability policies will provide a waiver of subrogation in favor of City; and
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than 10 days advance written notice for nonpayment of premium.

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

In addition to any other remedies City may have upon Competitor Group'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 Competitor Group to stop work hereunder, and/or withhold any payment(s) which become due to Competitor Group hereunder until Competitor Group demonstrates compliance with the requirements hereof.

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

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

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

10. Marathon Day.

The dates for each of the Marathon Events for the years 2016 through the termination of this Agreement, or any extension thereof, shall be as follows or such other dates as may be mutually agreed upon by the parties:

December 3-4, 2016

December 2-3, 2017 .

December 1-2 2018

December 7-8, 2019
December 5-6, 2020

If extended,

December 4-5, 2021
December 3-4, 2022

11. Other Events.

Any other events that Competitor Group would plan to stage to promote any Marathon Events would be the sole responsibility and expense of Competitor Group. Any other events besides the Marathon Events will require additional permits and/or licenses for those events, i.e. concerts. Any such event held on City property shall be subject to this Agreement. Any such event held on Private Property will be the sole responsibility and expense of Competitor Group to lease or otherwise contract for the use of that property.

12. Conditions Precedent to Effectiveness of Agreement.

This Agreement shall not be or become effective until the following conditions have been satisfied:

- a. Competitor Group has signed this Agreement;
- b. An authorized representative of the City has signed this Agreement;

13. Remedies for Breach.

It is understood that the parties shall have the following remedies and rights under this Agreement:

- a. In the event that:
 - (1) Competitor Group breaches or defaults in the performance or fulfillment of any material term, covenant or condition herein, other than its obligations pursuant to Article 5, contained on its part to be performed or filled and shall fail to cure such breach or default within 30 days following written notification from City to Competitor Group (or, if Competitor Group is diligently pursuing a cure, such greater time as may be reasonably necessary to completely cure such breach or default as allowed by City in its sole discretion) specifying the breach or default or defaults complained of and the date on which its rights hereunder will be terminated;
 - (2) A petition in bankruptcy is filed by or against Competitor Group and not released within 60 days thereafter;

(3) A receiver, trustee in bankruptcy or similar officer is appointed to take charge of Competitor Group or its property;

(4) Competitor Group shall make a general assignment for the benefit of creditors; or

(5) Competitor Group or any of its officers are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with Competitor Group's business;

Then City may, at its sole option, upon written notice to Competitor Group as provided in Article 17, terminate this Agreement.

b. Any election on the part of City to terminate this Agreement must be in writing, properly executed by City and served upon Competitor Group. No termination of this Agreement on account of default by Competitor Group shall be or become effective by operation of law or otherwise, unless and until City shall have given such notice to Competitor Group, specifying the default and Competitor Group shall have failed to cure the default so specified within 30 days following said written notice (or, if Competitor Group is diligently pursuing a cure, such greater time as may be necessary to completely cure such breach or default as is allowed by City in its sole discretion).

c. Competitor Group may terminate this Agreement upon the material breach or default in the performance or fulfillment of any material term, covenant or condition herein by the City, provided Competitor Group shall have given notice in writing to the City, specifying the default and City shall have failed to cure the default so specified within 30 days following said written notice (or, if City is diligently pursuing a cure, such greater time as may be necessary to completely cure such breach or default as is allowed by Competitor Group in its sole discretion).

d. Notwithstanding any other termination provisions herein, City may, in its sole discretion, terminate this Agreement by written notice to Competitor Group on or before August 1 of any Marathon Event year, in the event Competitor Group has failed to make satisfactory progress toward the requirements of Article 5 with respect to the next occurring Marathon Event, provided City has previously given notice to Competitor Group of such failure and Competitor Group shall have failed to cure the failure so specified within 30 days following such notification (or, if Competitor Group is diligently pursuing a cure, such greater time as may be reasonably necessary to completely cure such failure as allowed by City in its sole discretion) .

e. Notwithstanding anything in this Agreement to the contrary, the parties reserve the right to seek specific performance of this Agreement and either party hereto shall have the right to enjoin any anticipatory repudiation of this Agreement by the other.

f. Any termination of this Agreement shall automatically terminate Exhibits B, C and D without any further action.

14. Right to Terminate for Reasons Other than Breach.

In addition to the right to terminate as set forth in Article 13, and notwithstanding that Competitor Group is in compliance with all the requirements of this Agreement, City shall have the right to terminate this Agreement at any time without penalty if the City reasonably determines that the Marathon Event causes such occurrences as undue public endangerment, loss of Private Property, claims for the denial of access to Private Property, and excessive damage to public right of way. In addition to the rights of Competitor Group to terminate this Agreement for the reasons set forth herein, if Competitor Group reasonably determines that the Marathon Event becomes commercially unfeasible due to the loss of, or inability to gain access to, necessary Private Property, or loss or inability to obtain any necessary permits or schedule any events, Competitor Group shall have the right to terminate this Agreement without penalty.

15. When Rights and Remedies Not Waived.

In no event shall any performance by either party hereunder constitute or be construed to be a waiver by such party of any breach of term, covenant, or condition or any default which may then exist on the part of the other party, and the rendering of such performance when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the non-breaching party with respect to such breach or default; and no assent, expressed or implied to any breach of any one or more terms, covenants or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

16. Assignment and Subcontracting.

City is not obligated or liable under this Agreement to any party other than Competitor Group, and Competitor Group is not liable under this Agreement to any party other than City. Competitor Group understands and agrees that it shall not assign or subcontract with respect to any of its material rights, benefits, obligations or duties as owner, organizer and promoter of the Marathon under this Agreement except upon prior written consent and approval of City, which consent or approval may be withheld in the sole discretion of City. In the event the City consents to an Assignment or subcontract, such action shall not be construed to create any contractual relationship between the City and the assignee or subcontractor, and Competitor Group shall remain fully responsible to City according to the terms of this Agreement. Notwithstanding any of the foregoing, the sale of the Competitor Group during the term of this Agreement shall be considered an approved assignment as long as City reasonably determines, in its sole discretion, that the assignee is able to satisfy the requirements of this Agreement.

17. Notices.

All notices, demands or other communications required or permitted to be given under this Agreement shall be in writing and any and all such items shall be deemed to have been duly

delivered upon personal delivery or as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or as of 12:00 noon, local time of the recipient, on the immediately following business day after deposit with Federal Express or a similar overnight courier service provides evidence of receipt, addressed as follows:

If to City, to: Lori Houston, Assistant City Manager
City Hall
100 Military Plaza
San Antonio, Texas 78205

If to Competitor Group, Inc. to: Josh Furlow
President
Competitor Group
9477 Waples St.
San Diego, CA 92121

18. Construction of this Agreement.

- a. Governing Law. Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of any applicable federal, state and local law or regulation. This Agreement shall be governed in accordance with the laws of the State of Texas, which will be controlling in any dispute that arises hereunder.
- b. Paragraph Headings. The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.
- c. Time. The parties agree that in the performance of the terms, conditions and requirements of this Agreement, time is of the essence.
- d. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Competitor Group as are permitted to succeed Competitor Group's rights unto and subject to the terms hereof.
- e. Singular and Plural. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.
- f. Reasonableness of Consent or Approval. Unless otherwise specifically provided to the contrary, decisions, approvals, permissions or consents shall be made or granted in the reasonable discretion of the party making the same. Further, unless a specific time frame is provided herein, any approval, permission or consent shall not be unreasonably withheld or delayed. Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards and business and economic considerations.

g. Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

h. Survival of Certain Agreement Provisions. The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein.

i. Days. Unless specified otherwise in this Agreement, the term “days” shall refer to calendar days.

19. Status of Competitor Group.

Competitor Group covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that Competitor Group 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 Competitor Group, 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 Competitor Group. The parties hereto understand and agree that 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 Competitor Group under this Agreement and that Competitor Group has no authority to bind City.

20. Legal Authority.

a. Each party assures and guarantees the other that it possesses the legal authority to enter into this Agreement.

b. The person or persons signing and executing this Agreement on behalf of each party do hereby warrant and guarantee that he/she or they have been fully authorized by the related party to execute this Agreement on behalf of such party and to validly and legally bind such party to all the terms, performances and provisions herein set forth.

c. Each party shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of the other party or the person signing the Agreement to enter into this Agreement.

21. No Third Party Beneficiary.

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to City and Competitor Group, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person, including, but not limited to subcontractors, subconsultants, and suppliers set forth herein. It is the express intention of City and Competitor Group that any person or entity other than City or Competitor Group receiving services or benefits under this Agreement shall be deemed a third party beneficiary. City shall not be liable for payment to any of Competitor Group's third party beneficiaries.

22. Parties' Obligations with Respect to Confidential Information.

The parties agree that issues governing the use and disclosure of Confidential Information, as defined below, provided to or made available to City by Competitor Group will be governed by the following provisions:

a. Definition of Confidential Information. As used in this Agreement, the term "Confidential Information" means all information, of any nature and in any form, regardless of when given, that (i) is disclosed or provided by or through Competitor Group to City pursuant to performance of this Agreement, including but not limited to documents referenced in Section (e) below; and (ii) has been clearly marked or indicated in writing as being confidential by Competitor Group. Information falling within this definition shall be treated by City as confidential proprietary information of Competitor Group, subject to the provisions of the Texas Public Information Act and under any court order. Information not so marked or indicated will not be considered to be Confidential Information.

b. Use of Confidential Information. Except as expressly provided in this Agreement or as otherwise mandated by the Texas Public Information Act, or other applicable law, City will not disclose Confidential Information to anyone without the prior written consent of Competitor Group. City will not use, or permit others to use, Confidential Information for any purpose other than actions incidental to the performance and enforcement of this Agreement between the City and Competitor Group, including but not limited to auditing of records by Competitor Group by the City Auditor and/or other representatives of City. City will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information.

c. Public Records Requests. The parties recognize that the mere marking of a document as "Confidential" does not render it conclusively confidential under the Texas Public Information Act. In the event that City is served with an open records request or subpoena from any third party requesting all or part of any Confidential Information as defined herein, City shall give timely notice to Competitor Group of the request or subpoena within the time parameters of the Texas Public Information Act or of any applicable court rule. Upon receipt of the notice from City, Competitor Group may, at its option, immediately seek judicial relief (including, without limitation the issuance of a

temporary restraining order) preventing the disclosure of the Confidential Information or make arguments to the Texas Attorney General, as provided for under the Texas Public Information Act and shall defend, save and hold harmless and indemnify City and its agents and employees with respect to such issues. Competitor Group's failure to seek judicial relief or to seek a ruling from the Texas Attorney General within 10 days of notice from the City or the failure of Competitor Group to notify City of such efforts shall entitle City to disclose the Confidential Information to the person seeking the disclosure.

d. Disclosure Prohibited. Neither party shall, at any time or in any manner, either directly or intentionally by indirect means, divulge, disclose or communicate to any person, firm or corporation in any manner whatsoever any information concerning any matters which are not subject to public disclosure including, without limitation, the trade secrets of business or entities doing business with either party and other privileged or confidential information.

e. Review of Documents. Competitor Group covenants that City shall have the right to review its agreement with subcontractors, vendors and assigns and its agreements with Private Property holders, in each case that relate specifically to the Marathon Event. Competitor Group shall make these agreements available to City, at a City location, upon request. Notwithstanding anything in this Agreement to the contrary, the City shall not copy or retain a copy of the agreements, and any review thereof by City shall be subject to the confidentiality standards of this Article. The review shall be conducted only by City employees who have a "need to know" in connection with the provisions of this Agreement.

23. Examination of Records.

Competitor Group agrees to maintain financial records pertaining to all matters relative to this Agreement in accordance with standard accounting principles and procedures and to retain all records and supporting documentation applicable to this Agreement for a period of four (4) years after termination of this Agreement and any subsequent extensions thereof. All records' subject to audit findings shall be retained for four (4) years after such findings have been resolved. In the event Competitor Group goes out of existence, Competitor Group shall turn over to City all of such records and supporting documentation that relate to this Agreement to be retained by City for the required period of time.

24. Post Event Report.

Competitor Group shall provide to City a post Marathon Event report for each Marathon Event that shows attendance numbers, downtown room occupancy, estimated economic impact, media distribution, police and emergency response actions, and other items that will help City determine the success of the Marathon Event for the downtown and the metropolitan area. Competitor Group shall deliver to the City a preliminary draft summary report concerning each Marathon Event within sixty (60) days of that Marathon Event and a final report with the economic impact of each Marathon Event within 120 days of that Marathon Event.

25. Non Discrimination.

As a party to this Agreement, Competitor Group understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

26. Taxes, Permits and Licenses.

Competitor Group agrees to pay promptly all taxes, excises, license fees and permit fees of whatever nature applicable to its operations, and to take out and keep current all required licenses, municipal, state or federal, required for the conduct of business hereunder and further agrees not to permit any of such taxes, excises or license or permit fees to become delinquent. Competitor Group further agrees to furnish City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by Competitor Group of all required licenses and permits and all taxes. Competitor Group further agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operations, and not to permit the same to become delinquent in any material respect and to suffer no lien, mortgage, judgment or execution to be filed which will in any way impair the rights of City under this Agreement.

27. Force Majeure.

The rights and obligations of the parties to this Agreement shall be subject to delays or cancellation caused by strikes, fires, accident, acts of terrorism, war, adverse weather, acts of God, or orders of any military, civil or government authority beyond the control of the best efforts of the parties, and should such event or events occur from time to time the rights or obligations of the parties affected thereby, if any, shall be continued for a period equal to the period resulting from such delay, or suspended or excused pro rata. Notwithstanding the foregoing, in the event of a delay as a result of one or more of the foregoing events that continues for 60 days, Competitor Group shall have the right to terminate this Agreement without penalty.

28. Intellectual Property Ownership.

All present and future rights, title and interest to intellectual property of Competitor Group and its affiliates, including without limitation the rights to the name “Rock ‘n’ Roll San Antonio Marathon & Half Marathon” and all variations of that name in which Competitor Group has an intellectual property interest (“Competitor Group’s Intellectual Property”), are and will remain the sole and exclusive property of Competitor Group. Competitor Group grants to City a non-exclusive, royalty-free license to utilize Competitor Group’s Intellectual Property for the sole purpose of promoting, marketing and advertising the Marathon Events for the term of this Agreement; provided that Sponsor may not use any of Competitor Group’s Intellectual Property (including, without limitation, the Marathon Event logos) unless such use is specifically consented to in advance by Competitor Group. All goodwill arising from the use by City of Competitor Group’s Intellectual Property pursuant to the provisions of this Agreement will inure to the benefit of and be the exclusive property of Competitor Group.

29. Agreement as Complete Integration-Amendments.

This Agreement is intended as the complete integration of all understandings between the parties pertaining to the subject matter of the Agreement. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment or other agreement properly executed by the parties. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

30. Incorporation of Exhibits.

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

- Exhibit A: Detailed Race Plans
- Exhibit B: Alamodome License Agreement
- Exhibit C: Henry B. Gonzalez Convention Center License Agreement
- Exhibit D: Sponsorship Agreement

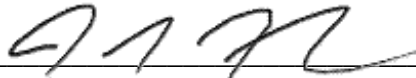
In the event of a conflict between this Agreement and any of the Exhibits, this Agreement shall be controlling.

IN WITNESS WHEREOF, this Agreement is executed by City and by Competitor Group, and both have caused this Agreement to be executed as of the day and year first above written.

CITY OF SAN ANTONIO, TEXAS

COMPETITOR GROUP, INC.

Sheryl Sculley, City Manager



Josh Furlow
President

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney