

**TEMPORARY ELECTRICAL AND PLUMBING SERVICES
LICENSE AGREEMENT**

BETWEEN

CITY OF SAN ANTONIO

AND

FREEMAN EXPOSITIONS, INC DBA FREEMAN

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**TEMPORARY ELECTRICAL AND PLUMBING SERVICES
LICENSE AGREEMENT**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Temporary Electrical and Plumbing Services License Agreement (“Contract”) is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”), acting by and through its City Manager pursuant to Ordinance No. 2016-06-____-_____, dated June __, 2016, and Freeman Expositions, Inc. d/b/a Freeman by and through its Director of Electrical Sales (hereinafter referred to as “Contractor”), both of which may be referred to herein collectively as the “Parties”. Contractor is as described in Exhibit B Contractor’s Articles of Incorporation and Joint Venture Agreement, which is attached and incorporated into this Contract, and include its officers, employee, agents, subcontractors, independent contractors, and invitees. No change to Exhibit B may be made without the written consent of City acting by and through Director.

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 accomplishments of the tasks hereinafter described.

RECITALS

WHEREAS, City owns and operates, through its Convention and Sports Facilities (“CSF”) Department, the Henry B. Gonzalez Convention Center, including the Lila Cockrell Theatre, the Alamodome, including the Illusions Theater, and the Carver Community Cultural Center, including the Jo Long Theatre and Little Carver Theatre (hereafter “Facilities”); and

WHEREAS, the Facilities are made available to individuals and organizations, including their agents, attendees, exhibitors and subcontractors, through short-term license agreements (hereafter “Licensees”); and

WHEREAS, such Licensees may require temporary power, lighting, compressed air, water and drain lines, fill and drain services, natural gas lines or gas cylinders, associated labor, and any other related services (hereafter “Services”) and therefore, City sought, through a Request for Qualifications (“RFQ”), to contract for the provision of such Services to Licensees; and

WHEREAS, Contractor submitted a proposal to City to provide such Services to Licensees and is willing to enter into this Contract for the purpose of providing these Services to Licensees subject to the terms hereof; and

WHEREAS, City, through a duly authorized City ordinance, accepted Contractor’s proposal and 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; **NOW THEREFORE**:

ARTICLE I. TERM

1.01 Initial Term. Subject to the fulfillment by Contractor of the condition precedent set out in Section 1.02 hereof, and unless sooner terminated in accordance with the provisions herein, the Initial Term of this Contract shall be five (5) years, and shall commence on October 1, 2016 (“Commencement Date”), and expire on September 30, 2021 (“Expiration Date”).

1.02 Condition Precedent. The delivery by Contractor to City of (i) the insurance certificate required by and in conformity with the provisions of Section 16.01 hereof, and (ii) copies of all permits and licenses required for the lawful provision of the Services in accordance with the terms hereof is a

condition precedent to the effectiveness of this Contract notwithstanding the execution of this Contract by both parties hereto and the delivery of counterparts of executed documents to each other. Contractor shall be obligated to procure the insurance required hereunder and all permits and licenses necessary for such lawful provision of the Services prior to any activity under this Contractor. If either such certificates, or said licenses and permits, have not been delivered at the time Contractor delivers executed counterparts of this Contract to City, then Contractor must deliver said items to City within ten (10) days of City Council approval of this Contract, or City may terminate this Contract without regard to any expense or liability incurred by either party hereto in contemplation of the commencement of this Contract.

1.03 Renewal Option. The City may renew the term of this Contract for one (1) consecutive five (5) year term ("Renewal Term"), subject to the approval of the City Council indicated by the passage of a City ordinance. The City reserves the right to modify all terms and conditions herein upon renewal, including the Commission.

ARTICLE II. RIGHTS GRANTED

2.01 Rights. City hereby grants to Contractor the right to provide Services at the Facilities, except as limited in this Contract, and the right to use and occupy the Facilities in connection with Contractor's provision of Services pursuant to the terms of this Contract. These rights extend to all portions of the interior and exterior of the Facilities that are operated or under the control of City and used in conjunction with the Facilities. Contractor shall perform the Services in accordance with Exhibit C Contractor's Proposed Plan, which is attached and incorporated into this Contract.

2.02 Exclusions. The following are excluded from the rights under this Contract:

- (a) The incidental use of standard outlets for connection of electrical devices such as meeting room audio-visual control, business machines (i.e. computers, printers, fax machines, copy machines), presentation projection systems, and heated and/or refrigerated food carts. Connection to utility and floor boxes is not included in this exception. If a Licensee's requirements exceed the load demands of a standard wall outlet, Licensee must utilize an approved contractor.
- (b) The installation, maintenance and operation of permanently installed electrical and plumbing services and fixtures such as electrical wall outlets; telecommunications and data connections; water fountains; kitchen utilities; restroom facilities; heating, ventilation and air conditioning; and sinks, unless Contractor damages such fixtures during the performance of the Services. In an emergency, City or Licensees may request assistance from Contractor.

2.03 Non-Exclusive. Contractor acknowledges that it is not the only City licensed contractor to provide these Services in the Facilities. Notwithstanding this, City reserves the right to provide the Services with City staff for all events, or to use other unapproved contractors, when such action is in the best interest of City, as determined by City's Director of the Convention and Sports Facilities (CSF) Department, or his/her designee, ("Director"), as applicable.

2.04 City reserves to itself, its successors, assignees, and contractors all rights, duties and benefits of the management, occupancy and operation of the Facilities not granted to Contractor as part of the Contract.

ARTICLE III. SCOPE OF SERVICES

3.01 Scope of Work. Contractor shall furnish all Services, equipment, labor, tools, materials, supplies, and other items necessary to perform Contractor's obligations under this Contract. Contractor shall provide, maintain and manage all activities associated with the sale, installation, operation and removal of Services as requested by Licensees. Contractor shall perform all Services in a professional and workmanlike manner to the satisfaction of the City. Contractor's staff shall conduct themselves in a

professional and courteous manner, and present themselves in a clean, neat and professional manner, at all times while in the performance of the Services.

3.02 Hours of Operation. Contractor's Local Office and staff shall be accessible during normal business hours, 8:00 a.m. to 5:00 p.m., Central Time, Monday through Friday, excluding official City holidays. Contractor shall operate in the Facilities at all hours necessary, including weekends and holidays, to meet the individual Service requirements of Licensees and support event activities at the Facilities, including move-in and move-out requirements. This includes providing Contractor service desks during events at times and locations mutually agreed upon between Contractor and Licensees. Contractor shall make itself available to meet with Licensees to plan Services for their events. Upon City request, Contractor shall have a qualified staff attend all pre- and post-event meetings for events at which it provides Services. Contractor shall have a Licensed and/or Registered Journeyman Electrician or Plumber or higher, as applicable, present in the Facilities at all times when Services are being performed.

3.03 Sales Efforts. Contractor shall constantly endeavor to improve Services with a view toward maximizing sales and service and to promote the marketing of the Facilities to Licensees and potential Licensees and patrons of the Facilities. Contractor will closely coordinate marketing efforts with the Facilities booking and services staff. Contractor shall participate in cooperative efforts with City and the San Antonio Convention and Visitors Bureau, including on-site visits and trade-show participation, upon reasonable request. Contractor shall attend any meeting with a Licensee or potential Licensee of the Facilities. Contractor shall analyze each event to determine the most appropriate means of marketing Services to Licensees, to procure contracts for Services with Licensees, and to assess the specific support requirements of each event. Contractor is expected to offer its Services to all Licensees; however, if Contractor elects not to compete for Services, Contractor must, upon request by Director, provide a written explanation. Contractor staff shall not offer City staff gifts, cash, tickets, or other methods of compensation for referrals.

3.04 Local Office. Contractor shall maintain a locally headquartered or branch office in the corporate limits of the City of San Antonio, the San Antonio extra-territorial jurisdiction (ETJ), or in Bexar County, Texas, for the entire term of the Contract and any renewals. If Contractor does not currently maintain a local office, as defined above, Contractor shall establish a local office within sixty (60) days from the Commencement Date. Contractor must notify Director of the local office information (contact name, address, phone number, and email address) as soon as the information is available, but not later than sixty (60) days from the Commencement Date.

3.05 Contractor Equipment. By the Commencement Date of the Contract, Contractor shall furnish and maintain, at Contractor's sole cost and expense, an adequate inventory of equipment, tools, materials, supplies and other items that are readily available at or near the Facilities for a 2,000 booth trade show which utilizes 70% of all exhibit halls, ballrooms, registration areas, and meeting rooms. Equipment shall be recognized as trade show components, and shall be high-quality, state-of-the-art, and in good repair, consistent with industry best standards and practices. Contractor shall provide and install, as necessary, all equipment necessary to allow compatibility between house service connections and Contractor equipment. All equipment and material shall comply with all applicable code requirements, including the National Electric Code and International Plumbing Code, and Underwriters' Laboratory standards. All equipment and material shall also be compatible with the Facilities' power and plumbing connections and fixtures. Contractor shall purchase, lease, build or otherwise obtain additional high-quality equipment necessary to satisfy the requirements of this Contract. This includes, but is not limited to: KVA step-down and miscellaneous transformers; distribution panels; adaptors; extension cords; flat wire and cables; disconnect switches; miscellaneous outlet devices; miscellaneous tails; fluorescent, incandescent, pars and quartz lamps; lighting fixtures; air compressors and hose; propane tanks; hot water heaters; carts; ladders; taping machines; radios; ramps; wet/dry vacuums; water coolers; shopping carts; bins; battery chargers; box fans; cable cutters; electric drill motors; forklifts; paddle fans; pallet jacks, and; hand and specialty tools. Contractor shall continuously maintain state-of-the-art utility distribution systems throughout the term of this Contract and any renewals. Equipment and material shall be kept at par levels and in good working condition at all times for providing quality Services to Licensees under the terms of this Contract. Contractor shall periodically acquire new equipment inventory for

replacement purposes for normal wear and tear, consistent with Contractor's business practices, and to reflect trends in the industry and to meet event requirements over the term of the Contract. Contractor shall pay for upgrades and replacement equipment as may be required during the term of the Contract and any renewals.

3.06 Service Standards. Contractor shall establish and maintain Service standards for the Facilities to provide City staff and Licensees with information related to the design and delivery of Services. These Service standards shall include, at a minimum, pre-show design, exhibit space standards, Contractor equipment technical specifications, and on-site practices, including safe work practices and maintenance of safe work premises for event setup and removal. Prior to and during events at which Contractor provides Services, Contractor shall:

- (a) monitor all exhibitor/Licensee installations during the event period to ensure against unsafe and hazardous connections made by Contractor or Licensee. If such connections exist, Contractor shall immediately notify City and shall be responsible for resolving the unsafe situation, with the assistance of City, if necessary;
- (b) immediately remove all equipment following its disconnection at the conclusion of each event and return the Facilities to their original condition, and;
- (c) not extend wiring or plumbing installations across pedestrian aisles, unless absolutely necessary to service Licensees and approved by City. City retains the right to direct Contractor to extend installations across aisles nor not.

3.07 City Rules and Regulations. City shall have the right to make and post such reasonable rules and regulations as may be deemed necessary for the conduct and management of the Services, and Contractor agrees that its staff shall obey such rules and directions of any authorized representative of the City. Contractor shall conform to all rules and regulations at any time promulgated by City with respect to the Facilities, including City's Operational Policies; cause its officers, employees, agents, subcontractors, independent contractors, and invitees at all times to abide by and conform to those rules and regulations, which City may at any time affix and establish for the conduct of Contractor's staff.

3.08 City Electrical Services. Contractor shall provide up to eighty (80) hours of electrical labor per Facility per year for repair and upgrades to electrical infrastructure. Such services shall be provided at no cost to City, except City shall be responsible for direct Contractor costs for: permitting and inspection fees; rented or shipped equipment, and; additional labor. Such services are excluded from Gross Receipts.

3.09 Catering and Concessions Electrical Services. Contractor shall provide up to twenty (20) 120 VAC electrical drops per service area in the area or adjoining areas in which the catering and concessions contractors at the Facilities are providing services for Licensees. Such services shall be provided free of charge to the catering and concessions contractors, except catering and concessions contractors shall be responsible for actual Contractor costs for: permitting and inspection fees; rented or shipped equipment, and; additional labor.

3.10 No Third-Party Sales. Contractor agrees that it will not use the Facilities (i) to conduct business not related to events or Licensees of the Facilities (ii) to solicit and provide Services to third parties that have no affiliation with events not using the Facilities or (iii) to solicit and provide Services directly to non-Licensees in the Facilities, without the prior written consent of City. Contractor shall not allow third parties to negotiate services or fees, or to bill Licensees directly. Contractor agrees to pay Commission to City for all Services at the Facilities.

3.11 Non-Compete. Contractor acknowledges City has contracts in the Facilities for other services including, but not limited to, the following. Contractor shall ensure that its Services and operations do not conflict or violate the terms of these contracts.

- (a) Audio Visual
- (b) Rigging
- (c) Temporary Production Labor (audio-visual, carpentry, electrical, theatrical properties, rigging, sound, special effects, wardrobe, hair and makeup, pyrotechnics, un-loading and loading of vehicles, and other services customarily associated with event production)
- (d) Distributed Antenna System (DAS)
- (e) Telecommunications

3.12 Security. Contractor shall utilize only sworn officers for the purposes of providing security, crowd control, and other police-related activities at all Facilities. This shall not include ticket takers, badge checkers, or individuals whose duty is to enforce house rules. Contractor shall use only sworn officers procured through the San Antonio Police Department (SAPD) Off-Duty Employment Unit (ODEU) for security, crowd control and other police-related activities while using the Facilities, and that number of officers determined to be necessary by the ODEU shall be paid by Contractor.

3.13 Mentorship. Contractor shall participate in the City's mentorship program as directed by the City's Economic Development Department. Such participation shall include registering as an available mentor and complying with all participation requirements.

ARTICLE IV. COMPENSATION TO CITY

4.01 Commission. In consideration for the rights and privileges granted under this Contract and effective upon the Commencement Date, Contractor shall pay to City thirty-two percent (32%) of Gross Receipts ("Commission") during the initial term and thirty-five percent (35%) if a renewal option is exercised. Gross Receipts shall mean the total amount of money, service, administrative and rental charges received or charged by Contractor or any agent, employee or subcontractor of Contractor for all sales, cash or credit (whether collected or not), made as a result of the rights granted under the Contract, together with the total amount received from all orders taken or received, excluding applicable sales and other taxes collected with the provision of Services and remitted to the appropriate tax authorities. Gross Receipts shall not include any amounts or orders collected, taken, received or filled by Contractor, inside or outside the Service Facilities, for Contractor services and equipment that are not for a Licensee. City acknowledges Contractor may provide similar services and equipment to non-Licensees away from the Facilities, and may collect, take, receive or fill those amounts or orders inside the Facilities, but those Gross Receipts are excluded from this Contract. In no event shall there be deducted from Gross Receipts any taxes imposed upon the operations or existence of Contractor (such as, without limitation, income taxes (whether federal, state or municipal), franchise taxes, use taxes and other similar impositions), nor shall there be deducted service charges for credit or debit card sales. It is understood by Contractor that all Commissions due City shall be calculated from the amounts actually billed to Licensees, or, in the event Services are provided to an organization or group of individuals attending an event of a Licensee, the amount actually billed to that organization or group of individuals, for all events held in the Facility in which Services are performed (i.e. Licensee is charged all-inclusive price for an event).

4.02 Commission Adjustment. To ensure that the Commission payable under this Contract is competitive City shall survey similar venues within the industry and may increase or decrease the Commission at the beginning of the Renewal Term of this Contract. Agreements between Contractor and Licensees executed prior to the effective date of City's notice, shall not be effected by the Commission adjustment. Contractor must provide to Director within five (5) days of receipt of City's notification a list of those Licensees which are under agreement with Contractor as of date of notification.

4.03 Monthly Statement. On or before the fifteenth (15th) day of the month immediately succeeding any month during which Services are provided, Contractor shall deliver to City electronically

via email a complete and accurate monthly statement in reasonable detail, in Microsoft Excel format, acceptable to City, indicating Contractor's Gross Receipts and the Commission payable by Facility. The statement shall indicate, at a minimum, the events at which Contractor provided Services, the Event Business Management System (EBMS) Event ID, the type and quantity of Services provided for each Licensee, and the unit and extended cost for each type of Service. Copies of all invoices for Services Contractor provided in the Facilities and City-approved pricing and/or commission adjustments shall be included in Contractor's monthly statement and also maintained in Contractor's files. If there are no Services performed in a Facility in any month, Contractor shall submit a statement indicating, "No Services Provided for the Month of [X] for [Facility]". The acceptance by City of any payment made by Contractor to City as provided in this Section, the passage of time, the failure of City to act, or any other event or circumstance shall not be deemed a waiver by City of its rights to question or dispute the accuracy or correctness of the monthly statement with respect to which such payment was made, and to demand or receive any additional amounts to which it is entitled, if any inaccuracy or incorrectness of such statement is determined or discovered. Contractor shall also deliver to City such other reports relating to the Contract as City may reasonably request.

4.04 Payment. Contractor shall make payment on or before the fifteenth (15th) day of the month immediately succeeding any month during which Services are provided by Contractor pursuant to this Contract. All payments shall be made payable to the City of San Antonio and shall be sent to the following, unless otherwise notified in writing by City. City reserves the right to require Contractor to remit payment to City electronically via Automated Electronic Clearinghouse (ACH) credit transfer.

City of San Antonio
Convention and Sports Facilities Department
Attn: Fiscal Division
P.O. Box 1809
San Antonio, Texas 78296-1809

4.05 Delinquency. Without waiving any other right of action available to City in the event of default in the timely payment due by Contractor to City pursuant to this Contract, any payment becoming past due shall incur a late fee of THIRTY-FIVE DOLLARS AND NO CENTS (\$35.00) for each day that the payment is outstanding and shall bear interest at the lesser of eighteen percent (18%), or the highest rate allowed by law, from the date the payment was due. Late Fees shall be prorated daily based on the annual percentage rate.

4.06 Revenue Forecast. Contractor shall prepare a financial forecast, in Microsoft Excel format, acceptable to City. Forecast shall include twelve (12) months of Gross Receipts and Commissions projections. Forecast is to be provided by event, where applicable. Forecast information shall be provided to City up to two (2) times per year, upon City request.

4.07 Contractor's Previously Booked Events. For events at the Facilities during the term of this Contract that were contracted by Contractor prior to the Commencement Date of this Contract, Contractor shall pay City the full Commission on Contractor's Gross Receipts for these events. The City will not allow a reduced Commission for these events.

4.08 Taxes, Fees or License Charges. The amount paid to City shall not include any taxes, fees or other license charges that may be levied, assessed or charged by any Governmental Authority. Contractor agrees to pay such taxes, fees or other license charges directly to the appropriate taxing authority. Contractor shall pay any and all applicable taxes on accounts of its services hereunder, including but not limited to, real property, personal property, sales tax and possessory interest or use tax, assessed or levied on Contractor's or City's interest in this Contract, Contractor's real or personal property and/or improvements constructed in City's property by Contractor, if any. This provision constitutes notice of possibility of the imposition of a possessory interest tax as contemplated by Revenue and Taxation Code Section 107.6. In the event Contractor is or subsequently becomes delinquent in the payment of taxes owed to the City of San Antonio, City reserves the right to deduct any delinquent taxes from payments City may owe to the delinquent Contractor as a result of this Contract.

4.09 Accounting. Contractor shall keep and maintain on a current basis, in accordance with generally accepted accounting practices consistently applied, and satisfactory to City, complete and accurate records and detailed books of account with respect to the Services provided by Contractor pursuant to the terms of the Contract and the rendering of Services by Contractor as provided in this Contract. In the event Contractor does not maintain said records within the City of San Antonio, Contractor shall make said records immediately available to City, upon City's request, under the provisions of Article XIV Notice, at a location within the City of San Antonio agreed to by the Parties, at Contractor's sole expense. Such records and books of account shall include, without limitation, all tickets, sales slips, cash register tapes, and records relating to the provision of Services in the Facilities, the purchase thereof for sale in the Facilities, or the delivery thereof to the Facilities, in connection with the Services provided by Contractor pursuant to the terms of the Contract and the rendering of Services by Contractor as provided for in this Contract. Contractor shall use common financial and accounting software for all financial and accounting transactions under this Contract, including but not limited to all Food Service proposals, contracts and invoices. This software will integrate with City's SAP accounting software, if possible, at Contractor's cost.

4.10 Audit. City reserves the right to audit Contractor's and its subcontractors' books and records which City determines relevant to this Contract for the purpose of determining the accuracy of the reported Gross Receipts and Contractor's and its subcontractors' compliance with this Contract. City, if it elects, has the right to require that any or all such books and records be submitted for audit to City, or to a Certified Public Accountant selected by City, or any other City designee. If it is determined, as a result of such audit, there is a deficiency in the Gross Receipts reported to City or Commissions due to City hereunder, such deficiency shall become immediately due and payable with interest at the maximum legal rate under applicable law from the date when said Commissions should have been paid. In addition, if Gross Receipts or Commissions have been understated by more than five percent (5%) of the Gross Receipts reported to City during the previous reporting period, then the entire expense of the audit shall be borne by Contractor.

ARTICLE V. PRICING

5.01 Pricing and Negotiations. Contractor shall charge Licensees prices for its Services which are fair, reasonable and competitive in the market. Contractor shall independently negotiate and prepare all Services contracts with Licensees. Contractor shall be free to negotiate Services contracts and deviate from all regular or discounted Services rates that may have been published by Contractor as provided herein. Contractor shall maintain contracts with Licensees and shall provide copies to City as requested.

5.02 Discounts and Reduced Pricing. Director may waive or reduce Commissions for Services, or request Contractor reduce its pricing, if it is in the best interest of City, as detailed in this Section. Except as provided for in this Section, Contractor shall not barter, trade, or discount Services provided that are Commissionable to City, unless prior written approval is received from Director.

- (a) Discount Threshold. Contractor may provide up to a twenty-five percent (25%) aggregate discount per Licensee per event without further City approval. For adjustments or discounts in excess of 25%, Contractor shall submit a written request to City, in a form acceptable to City, and obtain prior approval from Director. Contractor shall pay Commission on the undiscounted Gross Receipts.
- (b) Reduced Pricing. Director may request reduced pricing for Services for industry association events, City events, or events with significant economic impact to City. In these instances, City will waive its Commission, or a portion thereof, as determined by Director. Such Services shall be *included* in Gross Receipts.
- (c) City Events. For City events or other non-revenue generating events, Contractor shall provide Services at the reasonable request of Director. Services for these events are subject to the following:

- (i) Except as provided herein, Contractor shall provide Services for such events at no cost to City and, subject only to the provisions herein, will not invoice City for Services provided for such events;
- (ii) Such Services shall be excluded from Gross Receipts, if City is the invoiced party;
- (iii) City shall distribute the responsibility for providing these Services to all approved contractors;
- (iv) City shall be responsible for direct Contractor costs for: permitting and inspection fees; rented or shipped equipment, and; additional labor.

5.03 Additional Charges. It is the responsibility of Contractor to request prior written approval from Director for any additional charges to Licensees including, but not limited to, convenience charges, surcharges and service charges. This includes any charges which are represented in any manner as "taxes" and which are not entirely attributable to and payable to a specific taxing authority. An explanation of the additional fees/charges shall accompany the request. It is in the sole discretion of Director to approve or deny Contractor's request for additional charges to Licensees of the Facilities.

5.04 Rate Schedule. Contractor shall submit to Director for approval its proposed rate schedule, or rate card, for all Services to be provided in the Facilities under this Contract, including all equipment, materials and labor. Contractor shall ensure its rates are competitive with similar facilities. The rate schedule submittal must include comparable rates for the same services from other similarly-sized convention and hotel facilities as requested by City. The comparable facilities will be approved in advance by Director. Other than approved discounts, rate schedule adjustments are to be submitted to Director for approval, which shall not be unreasonably withheld.

5.05 Client Invoicing. In invoicing Clients, Contractor shall:

- (a) record each and every transaction and shall ensure a duplicate invoice, serially numbered, is issued for all Services provided to a Client at the Facilities;
- (b) not disclose, in any fashion, written or otherwise, the Commission, and;
- (c) issue invoices to Clients no later than fifteen (15) days after the event.

5.06 Client Records. Contractor shall maintain files for all events and Licensees, including, but not limited to, permits and inspections, Service diagrams including electrical layouts, invoices, credits, and adjusted price and Commission approval documentation.

ARTICLE VI. STAFF

6.01 Qualified Staff. Contractor shall employ, train and supervise neatly uniformed, clean and courteous staff with appropriate qualifications and experience in sufficient numbers to provide all Services required under this Contract. Contractor shall provide qualified staff and management with the technical and business expertise responsible for coordinating and providing prompt, courteous, and efficient support services and equipment that are consistent with the expectations held by Licensees. City shall admit free of cost to the Facilities, such officers and staff of Contractor as may be necessary, for only those events for which Contractor provides Services. City shall permit only appropriately credentialed Contractor staff in the Facilities without the payment of an admission fee.

6.02 Required Staffing. The staff shall include at a minimum:

- (a) Full-Time Manager – Contractor shall employ, at all times during the term of the Contract, an active, qualified, competent and experienced Manager who is acceptable to City, available to manage Contractor operations, and empowered to represent and act for Contractor in matters pertaining to day-to-day operations under the Contract;
- (b) Licensed Master Electrician (Onsite Supervisor), and;
- (c) Sufficient Licensed and Registered Journeyman Electricians and Plumbers to provide Services.

6.03 Communications. Contractor shall supply its staff with adequate communication devices (mobile phones and/or two-way radios) and provide contact information to City.

6.04 Conduct. Contractor's staff shall conduct themselves at all times in a proper and respectful manner in accordance with City's rules and regulations for the Facilities. City may reasonably require Contractor to eject from the Facilities any of Contractor's staff if Director determines that they have not complied with the provisions of this Section. Such misconduct includes, but is not limited to: offensive language or behavior; discourteous behavior, or; loud, boisterous or otherwise inappropriate behavior. Upon such request by City, Contractor shall immediately remove staff from continuing in its employ in the Facilities. Director shall have the right to require Contractor to provide acceptable replacement staff within a reasonable time after such ejection. If Contractor is unable or unwilling to provide a replacement acceptable to Director, the Contract shall be deemed to have been breached and City shall have the right to terminate this Contract following the applicable notice and cure period.

6.05 Dress, Grooming and Standards of Appearance. Contractor shall ensure its staff is in compliance with City's Dress, Grooming and Standards of Appearance Policy.

6.06 Identification. Contractor shall issue City-approved photo identification badges to all of its staff and subcontractors and require badges to be displayed at all times inside the Facilities. At a minimum, all temporary, contract and other labor shall be identified by badge, uniform, ribbon, pin, or other identifying symbol acceptable to Director. All badges must clearly indicate the staff and Contractor name and must be unobstructed and unadorned at all times while in the Facilities. Contractor's logo may appear on identification badges. Contractor shall recover all badges that have been deactivated, invalidated, unauthorized, suspended, rescinded or otherwise removed.

6.07 Uniforms. Contractor's staff shall wear a standardized uniform or shirt, with Contractor's logo, approved by Director, that is seasonally appropriate, and neat and presentable at all times.

6.08 Safety and Security. Contractor shall ensure the safety and security of the Facilities, Contractor staff, and all others in the Facilities in the performance of Services, including adequately training and certifying Contractor staff and providing OSHA-required Personal Protective Equipment.

6.09 City Approval. City shall have the right to review and approve the persons selected by Contractor as the Manager and Onsite Supervisor. Contractor shall not replace its Manager or Onsite Supervisor without prior approval from Director. In the event City determines the Manager's or Onsite Supervisor's performance is unsatisfactory, Contractor shall replace them within thirty (30) days written notice from Director.

6.10 Staff Report. Prior to the Commencement Date, Contractor shall provide City with a staff report and immediately notify City of any changes and provide updates as changes occur. This report shall include names, job titles, full-time or part-time, hire and separation dates, background check status and dates, and credential issue and retrieval dates.

6.11 Background Checks. Contractor shall conduct criminal background checks of all full- and part-time staff prior to employment and periodically throughout their employment. Contractor shall only

employ temporary or staffing agencies that conduct criminal background checks as well. Contractor shall maintain all background check documentation and provide to City as requested.

6.12 Facility Access. Contractor's staff shall utilize approved entrances and exits in the Facilities designated by City. Contractor's staff shall enter the Facilities only during events at which Contractor provides Services and for a reasonable time before and after events, and only for the purpose of performing their job duties. Contractor shall comply with City's security policies and any of City's future security changes at its expense. Said policies shall require all of Contractor's staff to comply with all instructions, regulations, rules and codes of conduct, as specified by Director, which will be provided on an ongoing basis.

6.13 Labor Relations. Texas is a right-to-work state. Under Texas Labor Code, a person cannot be denied employment because of membership or non-membership in a labor union or other labor organization. Contractor shall be responsible for their own labor relations with any trade or union represented among Contractor's staff and shall negotiate and be responsible for adjusting all disputes described above between itself and Contractor's staff, or any union representing such staff. **Contractor shall ensure that in any agreement Contractor has with any of its subcontractors that there be a similar provision whereby the subcontractors will INDEMNIFY and HOLD CITY HARMLESS for any damages or losses including attorney's fees resulting from labor relation disputes.**

- (a) If a picket or pickets appear on any public or private street or sidewalk upon which the Facilities abut with respect to an alleged labor dispute involving Contractor or any other organization, person or firm relating to the Services provided by Contractor pursuant to the License, or any other business or activity of Contractor or any other subsidiary or affiliate thereof:
 - (i) Contractor shall take immediate steps to settle or otherwise dispose of said dispute and to effect removal of said picket or pickets by all lawful means, including court order;
 - (ii) If said picket or pickets are not withdrawn within forty-eight (48) hours of notification by City to Contractor of the appearance thereof on said street or sidewalk and Contractor's operations hereunder are, in City's reasonable judgment, substantially impaired as a result thereof or the pickets interfere in any material respect with the proper conduct of the License or with the normal operation of the Facilities, Contractor shall, at the written request of City (the "Suspension Notice") suspend its operations in the Facilities, and during such suspension of operations, Contractor shall continue efforts to settle or otherwise dispose of said dispute or controversy and to effect the removal of said picket or pickets;
 - (iii) During any such suspension City shall have the right at any time to make whatever arrangements that it in its sole discretion deems necessary or suitable to continue or provide for the continuance of the Services independent of Contractor. In such connection, any proceeds or receipts derived from such operation by City (or its designee) for such period of suspension shall belong solely to City without any accountability to Contractor therefore.

ARTICLE VII. QUALITY ASSURANCE

7.01 Quality Services. Providing efficient and courteous staff, and high quality equipment and products, to Licensees of the Facilities is an essential and integral part of this Contract. Contractor shall provide all Services with superior customer service. Contractor shall provide efficient, prompt, courteous and quality Services which meet or exceed industry standards. City reserves the right to prohibit or suspend Contractor's provision of certain Services if those Services do not meet industry standards.

Failure to provide quality and consistent Services may be cause for termination in accordance with Article XIII Termination. All Services shall be performed to the reasonable satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. Director shall notify Contractor of any unacceptable levels of Services and Contractor shall immediately remedy Service deficiencies.

7.02 Client Survey. Contractor shall conduct its operation in such a manner so as to reasonably prevent complaints from Licensees of the Facilities regarding the quality of service provided by Contractor. City shall survey Licensees, assessing Contractor's performance on a scale of "Excellent" to "Poor", or as amended. Any response of "Fair" or lower, or the equivalent, shall require Contractor to provide a response and/or adjustment to Licensee's invoice, depending on the circumstances and performance of Contractor, as determined by Director.

ARTICLE VIII. FACILITIES

8.01 Prohibited Uses. Contractor shall conduct its operations in the Facilities in such a manner so as to prevent any:

- (a) cause for public nuisance;
- (b) creation of objectionable noises, notwithstanding Contractor's Services;
- (c) generation of noxious smoke, gases, vapors and odors;
- (d) illegal activity, or;
- (e) activities other than those permitted by this Contract.

8.02 Service Area. This Contract shall in no respect be applicable to any part of the San Antonio area other than the Facilities and shall in no event authorize Contractor to provide Services on the street and sidewalks adjacent to the Facilities or other facilities as they now exist or may be hereafter developed unless first approved in writing by City.

8.03 City Responsibilities. City shall be responsible for the following with respect to the Facilities:

- (a) Access. Providing adequate ingress and egress, including reasonable use of the corridors, passageways, and loading platforms.
- (b) Loading Docks. If available, City shall provide to Contractor, but shall be under no obligation to provide should availability be limited due to Licensee or other commitments, at City's cost and expense, adequate non-exclusive access to, and use of, loading docks in the Facilities, for use by Contractor in coordination with City and other users of the Facilities. Contractor shall not use any public elevators for gaining access to the Facilities during any events or at any time within thirty (30) minutes prior to any event. Contractor shall maintain the loading docks and dock wells in a clean and orderly fashion in order to minimize any hazard to persons and/or property.
- (c) City Staff. City hereby agrees and acknowledges that it will have a staff member, which may be City's Event Coordinator, in the Facilities during all events at which Contractor provides Services to serve as a liaison between the Facilities and Contractor. City staff shall be identified prior to each event. City staff shall be responsible, to the extent possible, in assisting Contractor with any problems which may arise with the Facilities; provided, however, that the presence of such City staff shall in no event be deemed or construed as expanding any of the duties or obligations which City has undertaken pursuant to the terms of this Contract, nor shall their presence be deemed or construed as abrogating (i) any limitation of such duties or obligations contained herein, or (ii) any limitation of liability of City expressly set forth in this Contract.

- (d) Cancellation. City shall have the sole right in its discretion, to cancel or reschedule any event during the term hereof or to dismiss the audience for any event. Contractor shall have no action or claim against City in such circumstance; although nothing contained herein shall be deemed or construed as limiting or impairing Contractor's rights or remedies against any other person for any loss or damage suffered by Contractor as a result of such cancellation or rescheduling.
- (e) Capital Improvements. Making such improvements and/or alterations as it may deem necessary in its sole discretion.
- (f) Maintenance and Repair. Maintaining and repairing the building structures, such as: maintenance of water, sewer (except for blockages caused by Contractor) and electrical lines; heating, ventilation and air conditioning lines and systems; repair of electrical lighting fixtures (including re-lamping), and; floor coverings, walls and ceilings. Contractor, however, shall bear the expense of repairs resulting from the acts or omissions of Contractor, and its vendors, agents and subcontractors.
- (g) Utilities. Providing, at no charge to Contractor, such HVAC, electricity, gas, water and sewer service that may be reasonably required for the efficient operation of the Services.
- (h) Cleaning. Providing cleaning services in all areas of the Facilities.

8.04 Utility Boxes. Contractor shall be responsible for the general maintenance and care of utility boxes within the exhibition areas of the Facilities. This includes, but is not limited to: monitoring of utility box covers; removal of trash and debris caused by Contractor, and; repair/replacement of minor parts/components or damage (i.e., blown fuses, broken face plates, broken valves, etc.). Contractor shall replace all missing screws after utilizing utility boxes.

8.05 Vehicles. The use of any mechanical or hand-operated vehicles or apparatus by Contractor or its suppliers within the Facilities shall be regulated by City's Operational Policies.

8.06 Dumpsters. Contractor is responsible for transporting its trash, recyclables and garbage to the designated dumpsters or recycling areas in the loading dock areas of the Facilities. City will designate locations where Contractor may deposit their trash and recyclables.

8.07 Sustainability. Contractor will be required to comply with all of City's current and future sustainability rules, regulations, laws, programs and requirements. This includes recycling, using utilities efficiently, using recycled materials, and using LEED-certified or "green" Equipment, methods and applications.

8.08 Deliveries. Deliveries of all supplies, goods, wares, merchandise and equipment shall be made at locations and times mutually agreed by Contractor and City, provided however, City shall not unreasonably withhold its agreement where such locations and times are reasonably established by Contractor as necessary to provide the services and which do not otherwise unreasonably interfere with the operation of the Facilities.

8.09 Maintenance. Contractor shall maintain all work areas in the Facilities in a clean and orderly fashion. Contractor shall immediately turn off and unplug all electrical equipment and devices upon completion of Services. Contractor shall be responsible for clearing all blockages to sanitary sewer lines at the Facilities caused by Contractor or its Services. The cost to repair or replace any utility service or lines due to Contractor's negligence shall be Contractor's expense. City will invoice Contractor for repairs at market rates if City makes such repairs.

8.10 Modifications. No excavation, additions or alterations shall be made by Contractor to the Facilities and/or appurtenances without prior written approval of Director. The use of the Facilities and

their appurtenances by Contractor and its staff or agents in any manner other than that authorized herein must be approved by Director.

8.11 Damage. Contractor shall maintain the Facilities in good working condition, normal wear and tear excepted. Contractor agrees not to commit, permit, or allow any damage to any part of the Facilities and appurtenances thereto. Any damages to the Facilities caused by Contractor, or any staff, agent, invitee or subcontractor of Contractor, shall be the sole responsibility of Contractor. City is expressly authorized to restore the Facilities or other appurtenances and to make such repairs, as may be necessary to prevent injury or damage, and Contractor agrees to pay City within ten (10) calendar days after the receipt of a statement of the cost of such repairs the full amount due as shown on the statement. City may require the use of City or City-contracted maintenance staff for any necessary repairs to the Facilities, if it is in City's best interest.

8.12 Fire and Other Emergencies. Contractor shall immediately notify the proper authorities in the event of fire or other emergency. Contractor shall immediately notify Director in the event of fire or other emergency by calling the emergency telephone number supplied by City. Contractor shall ensure that all Contractor staff are trained to respond to fire, civil defense, bomb threats, evacuations and other emergencies, based, in part, on any operating procedures provided by City. Contractor shall give City prompt notice followed by formal written notice of any fire damage occurring to the Facility, and a copy of all notices received by Contractor of any claim for bodily injury occurring at the Facility.

8.13 Loss. City shall not be held responsible under any circumstances for loss or damage to Contractor's stored supplies, materials or equipment, or for personal belongings of Contractor staff in the Facilities.

8.14 Removal of Property. Upon termination of this Contract, Contractor shall remove from the Facilities its merchandise, removable equipment, trade fixtures and other personal property in such a manner as to cause no damage to the Facilities, and in the event of any such damage, Contractor agrees to reimburse City for repairs and/or restoration to the Facilities to a condition reasonably satisfactory to City.

8.15 Abandonment. If Contractor fails or neglects to remove all or any portion of its merchandise, equipment, trade fixtures and/or personal property within fifteen (15) calendar days after the termination of the Contract, City, at its sole option and without prior notice to Contractor, may either remove and/or dispose of the same and charge the cost of such removal and/or disposal to Contractor, which costs Contractor hereby agrees to pay.

8.16 City's Reservation. City shall have the right to use all areas of the Facilities at any time, unless such areas have been previously committed for use in connection with Services under this Contract.

ARTICLE IX. NATURE OF CONTRACT

9.01 IN NO EVENT SHALL THIS CONTRACT EVER BE CONSTRUED TO HAVE CREATED ANY EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION FROM CITY TO CONTRACTOR AS TO THE ACTUAL RECEIPTS OR PROFITS WHICH CONTRACTOR MAY DERIVE OR EXPECT TO DERIVE WITH RESPECT TO THE OPERATION OF THE LICENSE AND CONTRACTOR ACKNOWLEDGES THAT NO SUCH WARRANTY OR REPRESENTATION HAS IN FACT BEEN MADE BY CITY OR ANY OTHER PERSON, PARTY, FIRM OR CORPORATION.

ARTICLE X. ADVERTISING AND MEDIA CONTACTS

10.01 Advertising of Names. Except as otherwise permitted by this Contract, Contractor shall not itself and shall not permit any subsidiary or affiliate of Contractor to advertise or promote in any way its own name or business or the name or business of any of its subsidiaries or affiliates in the Facilities, or on the streets and sidewalks adjacent to the Facilities, or use the name of the Facilities, or any variations

thereof, in any advertising, promotional or informational material, literature or publicity, or on any letterhead, or in any way advertise or publicize this Contract, the transactions provided for herein, and the relationships created thereby, without City's prior written approval. No public announcement, to the press, or otherwise, of the transactions provided for herein shall be made by Contractor or City, unless the same shall have been previously approved in writing by both Contractor and City.

10.02 Signage. Contractor shall not erect, install or operate signage or improvements in the Facilities, or in or upon any other City property, without the prior written consent of Director. Such written consent may provide conditions concerning factors such as existing signage, size, type, content, and method of installation.

10.03 Advertising Rentals. Contractor retains no advertising rights in this Contract. Contractor is prohibited from renting to others, display screens or other advertising media, for the purpose of advertising within the lobbies of the Facility, or otherwise selling sponsorship within the Facilities, without the prior approval of Director.

10.04 Reference to City. Contractor shall not refer to City or any office, agency, or officer thereof, or any City staff, or to the services or goods provided under this Contract, without the prior approval of Director.

10.05 Media Inquiries. Contractor shall refer all media inquiries regarding the subject matter of this Contract to Director.

10.06 Branding. Contractor shall not use City, or any other company brand, logos on collateral marketing materials, printed documents, order forms, websites, badges or uniforms, without the prior approval of Director.

10.07 Client Information. Contractor shall not share any of the data collected from Licensees with any other companies, including parent companies or other affiliated companies.

10.08 Use of Other Contractors. Solicitations to use other companies, other than the official Contractor, are also prohibited.

10.09 City Sponsorship. The City may sell advertising and sponsorship packages for the Facilities. Therefore, City reserves the final right of approval of Contractor's sources of product supply in connection with City granting exclusive rights to a company. This is limited to electrical and plumbing materials and supplies. Contractor, however, will not be required to purchase from suppliers, whose level of quality, service, and/or prices are not competitive with the marketplace.

ARTICLE XI. OWNERSHIP OF DOCUMENTS

11.01 Pursuant to Texas Local Government Code Chapter 201, any and all Records produced by Contractor pursuant to the provisions of this Contract are the exclusive property of City; and no such Record shall be the subject of any copyright or proprietary claim by Contractor. Record shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic.

11.02 Contractor understands and acknowledges that as the exclusive owner of any and all such Records, City has the right to use all such Records as City desires, without restriction.

ARTICLE XII. RECORDS RETENTION

12.01 Contractor and its Subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder ("Documents"), and shall make such Documents available to City at their respective offices, at

all reasonable times and as often as City may deem necessary during the contract period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

12.02 Contractor shall retain any and all Documents produced as a result of services provided hereunder for a period of four years ("Retention Period") from the date of termination of this Contract. If, at the end of the Retention Period, there is litigation or other questions arising from, involving or concerning these Documents or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees City shall have access to any and all such Documents at any and all times, as deemed necessary by City, during said Retention Period. City may, at its election, require Contractor to return the documents to City at Contractor's expense prior to or at the conclusion of the Retention Period. In such event, Contractor may retain a copy of the documents.

12.03 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the Documents referenced herein. Contractor understands and agrees City will process and handle all such requests.

12.04 Should City discover errors in internal controls or in record keeping associated with the scope of work covered by this Contract, Contractor shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed 60 days after discovery and notification by City to Contractor of such discrepancies. Contractor shall inform City in writing of the action taken to correct such audit discrepancies.

ARTICLE XIII. TERMINATION

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

13.02 Termination Without Cause. This Contract may be terminated by either party upon ninety (90) days written notice, which notice shall be provided in accordance with Article XIV Notice.

13.03 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article XIV Notice, City may terminate this Contract as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Contract:

- (a) The sale, transfer, pledge, conveyance or assignment of this Contract without prior approval, as provided in Article XXII Assignment and Subcontracting.

13.04 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Contract in a manner stated in this Section 13.04 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article XIV Notice, to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Contract in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Contract. City shall also have the right to offset the cost of said new contract with a new contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- (a) Bankruptcy or selling substantially all of company's assets.
- (b) Failing to perform or failing to comply with any covenant herein required.

(c) Performing unsatisfactorily.

13.05 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Contract shall automatically terminate as of the effective date of such prohibition.

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

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

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

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

13.10 Sales Leads After Contract Termination. Due to the non-exclusivity of this Contract, Contractor shall pay City the Commission on Contractor's Gross Receipts of all Services generated from sales leads provided by City for events at the Facilities for a period of twelve (12) months after termination of this Contract.

ARTICLE XIV. NOTICE

14.01 Except where the terms of this Contract expressly provide otherwise, any election, notice or communication required or permitted to be given under this Contract shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or UPS) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Attn: Director
Convention and Sports Facilities Department
P.O. Box 1809
San Antonio, TX 78296-1809

If intended for Contractor, to:

Freeman Expositions, Inc. dba Freeman
Attn: John Coppin, Director of Electrical Sales

PO Box 660613
Dallas, Texas 75266

With Copy to:

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

ARTICLE XV. INTELLECTUAL PROPERTY

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

15.02 Contractor agrees to **INDEMNIFY, DEFEND and HOLD HARMLESS, at its own expense, City, its officials, agents and employees from any and all liability arising from trademark or copyright infringement and/or consequential damages that others may suffer as a result of the use by Contractor or its designee of copyrighted materials during the term of this Contract.**

ARTICLE XVI. INSURANCE

16.01 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed certificate(s) of insurance to the City's Convention and Sports Facilities Department, which shall be clearly labeled "**Temporary Electrical and Plumbing Services for 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 a memorandum of insurance or binder as proof of insurance. The certificate(s) must be signed by the authorized representative of the carrier, and list the agent's signature and phone number. The certificate shall 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 Convention and Sports Facilities Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

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

16.03 Contractor's financial integrity is of interest to City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized 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:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate per project, or its equivalent in Umbrella or Excess Liability Coverage

c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	f. \$300,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

16.04 At the discretion of the Contractor, any subcontractors and/or suppliers providing goods or services hereunder may be required to obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the Agreement for all purposes.

16.05 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Convention & Sports Facilities
Attn: Fiscal Division
P.O. Box 1809
San Antonio, Texas 78296-1809

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

- a. Name 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;
- b. 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;
- c. Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City
- d. Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

16.07 Within five calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement certificate of insurance and applicable endorsements to City. City shall have the option to suspend Contractor'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.

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

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

16.10 It is agreed that Contractor'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.

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

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

ARTICLE XVII. INDEMNIFICATION

17.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and 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 CONTRACTOR'S activities under this AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, 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 CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

17.3 CONTRACTOR shall advise CITY in writing within 24 hours of any claim or demand against CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this AGREEMENT.

17.4 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Contractor fails to retain counsel within such

time period, City shall have the right to retain defense counsel on its own behalf, and Contractor 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.

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

ARTICLE XVIII. WAIVER OF LIENS

18.01 It is understood that by virtue of this Contract, no mechanic, contractor, material man, artisan or laborer, whether skilled or unskilled, shall ever in any manner have, claim or acquire any lien upon the Facilities, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said Facilities or any of the improvements are so erected, built or situated. Contractor will obtain and furnish to City a Waiver of Liens from each vendor, material manufacturer, and laborer in the supply, installation and servicing of each piece of equipment prior to final payment.

ARTICLE XIX. ACTS OF GOD

19.01 If the Facility or any portion thereof is destroyed or damaged by fire or other calamity so as to prevent the use of the Facility for the purposes and during the periods specified in this Contract, or if the use of the Facility by Contractor shall be prevented by an act of God, strike lockout, material or labor shortage, restrictions by any governmental authority, civil riot, flood or any other cause beyond the control of City, then, notwithstanding any other remedies available to City under this Contract, this Contract shall terminate. City shall not be liable or responsible to Contractor for any damages caused thereby and Contractor hereby waives any claims against City for damages by reason of such termination.

ARTICLE XX. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM

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

20.02 Definitions

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

- (b) **Certification or “Certified”** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.
- (c) **Centralized Vendor Registration System (CVR)** – a mandatory electronic system wherein City requires all prospective Contractors and Subcontractors that are ready, willing and able to sell goods or services to City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.
- (d) **Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Contractor to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by City as fraudulent if Contractor attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, Contractor shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and Contractor and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
- (e) **Evaluation Preference** – an API that may be applied by the Goal Setting Committee (“GSC”) to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to City by S/M/WBE firms may be awarded additional Points in the evaluation process in

the scoring and ranking of their proposals against those submitted by other prime Contractors or Contractors.

- (f) **Good Faith Efforts** – documentation of Contractor’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting Contractor’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for this Contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by Contractor; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Contractor’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.
- (g) **HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]
- (h) **Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.
- (i) **Individual** – an adult person that is of legal majority age.
- (j) **Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”
- (k) **Joint Venture** – a collaboration of for-profit business entities, in response to a solicitation, which is manifested by a written agreement between two or more independently owned and controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture.

- (l) **Minority/Women Business Enterprise (M/WBE)** – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.
- (m) **M/WBE Directory** – a listing of minority- and women-owned businesses that have been certified for participation in City's M/WBE Program APIs.
- (n) **Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).
- (o) **Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:
 - (i) African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.
 - (ii) Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
 - (iii) Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
 - (iv) Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.
- (p) **Originating Department** – City department or authorized representative of City which issues solicitations or for which a solicitation is issued.
- (q) **Payment** – dollars actually paid to Contractor and/or Subcontractors and vendors for City contracted goods and/or services.
- (r) **Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).
- (s) **Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for City. For purposes of this Contract, this term refers to Contractor.
- (t) **Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for

determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

- (u) **Contractor** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by City. For purposes of this Contract, Contractor is the Contractor.
- (v) **Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.
- (w) **Responsive** – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.
- (x) **San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which City's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).
- (y) **SBE Directory** - a listing of small businesses that have been certified for participation in City's SBE Program APIs.
- (z) **Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.
- (aa) **Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.
- (bb) **Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of City that is primarily responsible for general oversight and administration of the S/M/WBE Program.
- (cc) **Small Business Office Manager** – the Assistant Director of the EDD of City that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

- (dd) **Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.
- (ee) **Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor or Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with City. A copy of each binding agreement between Contractor and its Subcontractors shall be submitted to City prior to execution of this Contract and any Contract modification agreement.
- (ff) **Suspension** – the temporary stoppage of the SBE or M/WBE firm’s beneficial participation in City’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Contractor’s and/or S/M/WBE firm’s performance and payment under City contracts due to City’s imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.
- (gg) **Subcontractor/Supplier Utilization Plan** – a binding part of this Contract which states Contractor’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this Contract, and states the name, scope of work, and dollar value of work to be performed by each of Contractor’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this Contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Contract to be approved by the EDD Director or designee.
- (hh) **Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Contract is not inclusive of MBEs.

20.03 SBEDA Program Compliance – General Provisions

- (a) As Contractor acknowledges that the terms of City’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in City’s SBEDA Policy & Procedure Manual are in furtherance of City’s efforts at economic inclusion and, moreover, that such terms are part of Contractor’s scope of work as referenced in City’s formal solicitation that formed the basis for contract award and subsequent execution of this Contract, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Contract, and are considered by the Parties to this Contract to be material terms. Contractor voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this Contract by City. Without limitation, Contractor further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:
 - (i) Contractor shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding

Contractor's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

- (ii) Contractor shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Contractor or its Subcontractors or suppliers;
- (iii) Contractor shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Contract;
- (iv) Contractor shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Contractor's Subcontractor / Supplier Utilization Plan for this Contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Contractor to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Contractor of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
- (v) Contractor shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with City, as well as any transfer or change in its ownership or business structure.
- (vi) Contractor shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this Contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
- (vii) In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Contractor's Subcontractor / Supplier Utilization Plan, Contractor shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and Contractor and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
- (viii) Contractor acknowledges City will not execute this Contract or issue a Notice to Proceed for this project until Contractor and each of its Subcontractors for this project have registered and/or maintained active status in City's

Centralized Vendor Registration System, and Contractor has represented to City which primary commodity codes each registered Subcontractor will be performing under for this Contract.

20.04 SBEDA Program Compliance – Affirmative Procurement Initiatives

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

(i) **M/WBE Joint Venture Program.** In accordance with SBEDA Ordinance Section III. D. 6. (c), this Contract is being issued pursuant to the M/WBE Joint Venture Program. Therefore, the documentation Contractor submitted with its proposal for this Contract reflecting the name or names of the M/WBE Joint Venture partner(s) that will participate on the project; the percentage of prime contract dollars and the absolute dollar value of the services that will be provided by each M/WBE Joint Venture partner; and a description of the work that each M/WBE Joint Venture partner shall be responsible for performing under the terms of the Joint Venture agreement with Contractor is hereby attached and incorporated by reference into the material terms of this Contract. In the absence of a waiver granted by the SBO, failure of Contractor to attain this agreed-upon level of M/WBE Joint Venture participation in performing a Commercially Useful Function under this Contract shall be a material breach and grounds for termination of this Contract with City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization of M/WBE Joint Venture participation, and/or shall be subject to any other remedies available under the terms of this Contract for violations of the SBEDA Ordinance, or under any other law.

(ii) **SBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 5. (a), this Contract is being awarded pursuant to the SBE Subcontracting Program. Contractor agrees to subcontract at least thirteen percent (13%) of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA).

(iii) **M/WBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. Contractor agrees to subcontract at least ten percent (10%) of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA).

(b) The Subcontractor / Supplier Utilization Plan Contractor submitted to City with its response for this Contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this Contract), and that contains the names of the certified M/WBE Subcontractors to be used by Contractor on this Contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE and M/WBE Subcontractor, and documentation including a description of each SBE and M/WBE Subcontractor's scope of work and confirmation of each SBE and M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached as Exhibit E and incorporated

by reference into the material terms of this Contract. In the absence of a waiver granted by the SBO, the failure of Contractor to attain this subcontracting goal for SBE and M/WBE firm participation in the performance of a Commercially Useful Function under the terms of this Contract shall be a material breach and grounds for termination of this Contract, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE and M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Contract for violations of the SBEDA Ordinance, or under any other law.

- (c) **Subcontracting Diversity:** City strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the SBE subcontracting goal of 13% and M/WBE subcontracting goal of 10% that have been established for this Contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Professional Services industry, as reflected in City's Centralized Vendor Registration system for the month of April 2015, African-American owned firms represent approximately 2.54% of available subcontractors, Hispanic-American firms represent approximately 7.44%, Asian-American firms represent approximately 0.64%, Native American firms represent approximately 0.00%, and Women-owned firms represent approximately 5.28% of available professional services subcontractors.

20.05 Commercial Nondiscrimination Policy Compliance

- (a) As a condition of entering into this Contract, Contractor represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Contractor's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Contract. Contractor shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to this Contract.

20.06 Prompt Payment

- (a) Upon execution of this Contract by Contractor, Contractor shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure Contractor's reported

subcontract participation is accurate. Contractor shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of Contractor's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Contractor, and no new City contracts shall be issued to Contractor until City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of this Contract.

20.07 Violations, Sanctions and Penalties

- (a) In addition to the above terms, Contractor acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Contract to:
- (i) Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
 - (ii) Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
 - (iii) Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
 - (iv) Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
 - (v) Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.
- (b) Any person who violates the provisions of this Section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:
- (i) Suspension of this Contract;
 - (ii) Withholding of funds;
 - (iii) Rescission of this Contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
 - (iv) Refusal to accept a response or proposal; and
 - (v) Disqualification of Contractor or other business firm from eligibility for providing goods or services to City for a period not to exceed two years (upon City Council approval).

ARTICLE XXI. NON-DISCRIMINATION

21.01 Non-Discrimination. As a party to this Contract, Contractor 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.

ARTICLE XXII. ASSIGNMENT AND SUBCONTRACTING

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

22.02 Contractor may not sell, assign, pledge, transfer or convey any interest in this Contract, nor delegate the performance of any duties hereunder, by transfer or any other means, without the prior written consent of City. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Contract in the event of default by the successor Contractor, assignee, transferee or subcontractor.

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

22.04 Any work or services provided by Contractor's subcontractors shall be subcontracted only by written contract, agreement, purchase order, invoice or the like, and unless specific waiver is granted in writing by City, shall be subject by its terms to the applicable business terms of this Contract. Compliance by subcontractors with this Contract shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees.

ARTICLE XXIII. INDEPENDENT CONTRACTOR

23.01 Contractor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City. 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 Contractor under this contract and Contractor has no authority to bind City. The doctrine of *respondeat superior* shall not apply as between City and Contractor.

ARTICLE XXIV. CONFLICT OF INTEREST

24.01 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns 10% or more of the voting stock or shares of the business entity, or 10% or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

24.02 Pursuant to the Section above, Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of

City. Contractor further warrants and certifies that is has tendered to City a Contracts Disclosure Statement in compliance with City's Ethics Code.

ARTICLE XXV. AMENDMENTS

25.01 Except where the terms of this Contract expressly provide otherwise, any amendment to this Contract shall not be binding on the Parties unless such amendment be in writing, executed by both City and Contractor and dated subsequent to the date hereof, and subject to City Council approval, if required.

ARTICLE XXVI. SEVERABILITY

26.01 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.

ARTICLE XXVII. LICENSES AND PERMITS

27.01 Contractor warrants and certifies Contractor, subcontractors and any other person designated to provide Services hereunder have the requisite training, licenses and/or certifications to provide said Services, and meet all competence standards promulgated by all other authoritative bodies, as applicable to the Services provided herein.

27.02 Electricians and Plumbers. Contractor shall provide licensed and registered master and journeyman electricians, plumbers, and such other licensed professionals as are needed to successfully and legally satisfy the requirements of this Contract. Contractor's staff shall meet the current licensing and registration requirements of the State of Texas and/or City of San Antonio Development Services Department, as applicable. The Master Electrician shall have the ultimate responsibility to determine that all electrical Services comply with applicable laws, and administrative and safety codes.

27.03 Permits and Inspections. Contractor shall maintain all sales tax licenses and operating permits necessary for the operations. Contractor and its subcontractors shall, at their own expense, procure and keep in force during the term of this Contract, all licenses, permits and franchises required by law to provide Services at the Facilities from any Governmental Authority required under the Legal Requirements, and as may be required to enable Contractor to fully and lawfully perform the Services and to fulfill all its obligations hereunder, including, but not limited to, electrical and plumbing licenses, permits and inspections. Legal Requirements shall mean any and all present and future laws, statutes, ordinances, decisions, decrees, statutes, rulings, rules, codes, procedures, orders, regulations, permits, certificates, licenses and other requirements of any Governmental Authority (as defined herein) in any way applicable to Contractor, the Facilities, the Services, this Contract, City, including, without limitation, any safety laws, health laws, environmental laws and laws regarding the rights of and obligations to the handicapped and disabled, including without limitation, the Occupational Safety And Health Act (OSHA) and the Americans With Disabilities Act (ADA). For purposes hereof "Governmental Authority" shall mean any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental or quasi-governmental unit (federal, state, county, district, municipal, City or otherwise), whether now or hereafter in existence. Permits and inspections shall be obtained by Contractor prior to the performance of Services and copies of all permits and inspections shall be maintained by Contractor and provided to City upon request. Contractor shall be responsible for any violations of Legal Requirements in the Facilities which occur during the term of this Contract or any

renewal as a result of Contractor's operations hereunder; it being expressly understood by and between the parties Contractor shall not be responsible for any violations of Legal Requirements which occur solely as a result of City's actions.

27.04 It is understood that this Contract is conditioned on Contractor's and any subcontractor's use of licensed and/or registered master and journeyman electricians and plumbers, and obtaining electrical permits and inspections, as required, in connection with the Services.

27.05 Nothing contained herein shall be construed as binding City to the issuance of any license or permit needed by Contractor or any subcontractor to enable anyone to provide Services hereunder.

27.06 In the event of termination or expiration of this Contract by either Party, and upon expiration hereof, it is mutually understood and specifically agreed that any and all permits or licenses issued to Contractor and subcontractors by City for operations at the Facilities shall be canceled without further notice or hearing.

ARTICLE XXVIII. COMPLIANCE

28.01 Contractor shall provide and perform all services under this Contract in compliance with all applicable federal, state, local laws, rules and regulations, including City permitting requirements.

ARTICLE XXIX. NON-WAIVER OF PERFORMANCE

29.01 Unless otherwise specifically provided for in this Contract, 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. 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.

ARTICLE XXX. LAW APPLICABLE

30.01 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.

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

ARTICLE XXXI. LEGAL AUTHORITY

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

ARTICLE XXXII. PARTIES BOUND

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

ARTICLE XXXIII. CAPTIONS

33.01 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.

ARTICLE XXXIV. EXHIBITS

34.01 The Exhibits listed below are an essential part of the Contract and it governs the rights and duties of the parties. Any conflict between this Contract and the Exhibit shall be resolved in favor of this Contract.

- (a) Exhibit A: City’s Request for Qualifications (RFQ)
- (b) Exhibit B: Contractor’s Articles of Incorporation and Joint Venture Agreement
- (c) Exhibit C: Contractor’s Proposed Plan
- (d) Exhibit D: Contractor’s Subcontractor / Supplier Utilization Plan

ARTICLE XXXV. ENTIRE AGREEMENT

35.01 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 be duly executed by the parties, in accordance with Article XIV Notice.

Signatures appear on next page.

EXECUTED and **AGREED** to this the _____ day of _____, 2016.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

FREEMAN EXPOSITIONS, INC. DBA
FREEMAN

Sheryl L. Sculley
City Manager

John Coppin
Director of Electrical Sales

APPROVED AS TO FORM:

Martha G. Sepeda
City Attorney

ATTEST:

Leticia M. Vacek
City Clerk

DRAFT