

**PROFESSIONAL SERVICES AGREEMENT
FOR
COMMERCIAL SPONSORSHIP SALES**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”), acting by and through its City Manager, pursuant to Ordinance No. _____-____-____-_____ passed and approved on the _____ day of _____, 20____, and Premier Partnerships by and through its President & CEO (hereinafter referred to as “Consultant”), both of which may be referred to herein collectively as the “Parties”.

RECITALS

WHEREAS, the City owns and operates, through its Convention and Sports Facilities Department, the Alamodome (hereafter “Facilities”);

WHEREAS, the City issued a Request for Proposals (RFP) for Commercial Sponsorship Program in February 2012 in which the Consultant was selected and subsequently entered into a Professional Services Agreement for Commercial Sponsorship Program executed July 11, 2012, to inventory and value the commercial sponsorship inventory of the Facilities and develop a sales strategy (“Development Phase I”); the commercial sponsorship inventory of the Facilities and sales strategy were updated in July 2016.

WHEREAS, the RFP included an option for the City to utilize the Consultant for the sale of the Facilities’ commercial sponsorship inventory (“Implementation Phase II”);

WHEREAS, Consultant has extensive experience and knowledge with respect to marketing, corporate sales, and commercial development with regard to a variety of sports venues and entertainment facilities, events, and other properties; and

WHEREAS, the City desires to engage Consultant to provide certain consulting services in connection with commercial sales representation, services and advice with respect to the Alamodome regarding all sponsorship, naming rights for the Alamodome, and other marketing platforms, and other potential marketing properties and platforms, which may be acquired or developed in connection and association with the Alamodome, and/or included in marketing programs by Consultant (“Commercial Sponsorship Rights” or “CSR”).

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

I. DEFINITIONS

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

1.1 “City” is defined in the preamble of this Agreement and includes its successors and assigns.

1.2 “Consultant” is defined in the preamble of this Agreement and includes its successors.

1.3 “Director” shall mean the director of the City’s Convention and Sports Facilities Department or his designated representative.

1.4 “CSR Revenue” shall mean the total of all cash and cash equivalents paid to City under a sponsorship agreement secured by Consultant under the terms and conditions herein, excluding sales tax, discounts, credits and refunds.

1.5 “In-Kind CSR Value” shall mean the most favorable (i.e. the lowest) retail price value to City of any in-kind (i.e. non-cash) barter included as part of the consideration in a sponsorship agreement secured by Consultant and under the terms and conditions herein, excluding amounts on account of sales tax. Notwithstanding the foregoing, the barter must be a tangible physical asset (e.g. commodities, equipment) and not a discounted or free intangible benefit (e.g. advertising in a publication or internet site) and, City and Consultant must agree in writing at or prior to the time that City enters into any sponsorship agreement or arrangement that City is receiving an item or items that constitute a barter item under this Agreement and the value of the barter received.

1.6 “Pipeline Report” shall mean a status report on all sourcing, marketing and sales efforts, as well as planned efforts and proposed companies to be targeted for sales efforts. Such report shall be grouped by sales stage and shall include the following information at a minimum: opportunity name, industry, lead source, account name, estimated value, last contact date, probability, age and notes, if appropriate. Sales stage shall include sold, negotiating, selling, reviewing, prospecting, targeting, reserved and declined.

II. TERM

2.1 Initial Term. Unless sooner terminated in accordance with the provisions of this Agreement, the Term of this Agreement shall commence upon the Execution Date as indicated in this Agreement and terminate upon the end of the twelve (12th) month following the Execution Date (hereinafter referred to as “Initial Term”).

2.2 Renewal Term. At the end of the Initial Term, the Parties may renew this Agreement for up to two additional (1) year periods (“Renewal Terms”), the first of which, if utilized, would commence on the first anniversary of the Execution Date and the first Renewal Term terminating twelve months thereafter. If utilized, the second Renewal Term would commence immediately following the first Renewal Term and terminate twelve months thereafter. The exercise of the Renewal Terms may be executed by Director and shall not

require City Council approval. This Agreement shall be deemed to continue in full force and effect during the Renewal Term.

2.3 Agreement Year. Each twelve (12) month period commencing on the Execution Date and each anniversary thereof shall be an “Agreement Year”, as such term is used herein.

2.4 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Consultant agrees to provide the services described in this Article III in exchange for the compensation described in Article IV Compensation to Consultant.

3.2 Consultant shall perform the following services for the benefit of City during the Term of this Agreement:

- 3.2.1 Through Development Phase I, Consultant developed and provided the City with a commercial sponsorship sales strategy to generate additional City revenue through an integrated sales process (“Sales Strategy”). Consultant will assist City in implementing the Sales Strategy and will do so in accordance with the updated Final Executive Report submitted to City on July 25, 2016. Consultant has identified multiple sales packages for the Alamodome that will be customized between (1) Naming Rights Partner, (8) Founding Partners, and (5) Marketing Partners.
- 3.2.2 Consultant shall apply the Sales Strategy developed during the Development Phase I and described above in Section 3.2.1, including inventory creation, packaging, valuation, category development, lead generation, consultancy on presentation materials and physical presentation, and overall negotiation and management of sponsorship assets for Implementation Phase II. The City will ultimately be responsible for collateral development through consultant managing/outsourcing to 3rd party creative agency(s) at the City’s expense under this Agreement.
- 3.2.3 Consultant shall apply the Sales Strategy to identify, market to, and sell persons or entities the rights to name the Alamodome, and designated building elements within the Alamodome as agreed to by City, (collectively, “naming rights”).
- 3.2.4 Consultant shall apply the Sales Strategy to identify, market to, and sell persons or entities other sponsorship opportunities including but not limited to: Founding Partners, Building Partners, Beverage Partners, Sponsors, Advertisers and other corporate partners as agreed to by City, (collectively, “sponsorships”).

- 3.2.5 During the first nine (9) months of the Initial Term, Consultant shall prioritize obtaining a naming rights sponsor for the Alamodome and maximizing sponsorship revenue in the existing beverage pouring rights with leads within the banking, beer, telecommunications, auto and ticketing categories.
- 3.2.6 As mutually agreed between the Parties during the first nine (9) months of the Initial Term, Consultant shall work on maximizing sponsorship revenue in other categories as requested by City, such as telecommunications, Wi-Fi and RFID (“Radio Frequency Identification”).
- 3.2.7 With respect to all services described herein, Consultant shall work directly with the Director and City personnel in efforts to obtain sponsorships.

3.3 Without in any way limiting any other term or provision of this Agreement or any obligation of Consultant hereunder, Consultant shall adhere to the following requirements:

- 3.3.1 Consultant shall provide Seth Frankenthal, Managing Director, as the project leader and Randy Bernstein, President, for the performance of the Services pursuant to this Agreement. Consultant understands and agrees that City is entering into this Agreement based on the availability and participation of these key employees in Consultant’s provision of the Services, and as such Consultant shall not replace these key employees without the prior written consent of City, in its sole and absolute discretion. If either key employee leaves Consultant, then City has the immediate right to renegotiate or to terminate this Agreement. In the event that City terminates this Agreement, Consultant will be paid commissions on CSR Revenue and In-Kind CSR Value received prior to the effective date of such termination, but no further compensation under this Agreement shall be due thereafter. Consultant will work with the Director to identify other Consultant personnel who may be assigned to City's account. City shall have the right to approve Consultant’s staffing and any changes to Consultant’s staffing shall be approved in advance by City.
- 3.3.2 Consultant shall not enter into formal discussions with, or submit proposals to any companies or negotiate any terms or conditions of any agreements on behalf of City, without the prior consent or approval of Director.
- 3.3.3 Consultant shall comply with all City advertising policies and guidelines, including those attached and incorporated into this Agreement as Exhibit I.

- 3.3.4 Consultant shall not contact or approach any companies that are in conflict with current or pending sponsors of City or its customers, or with certain companies or business categories that City elects at its discretion.
- 3.3.5 Consultant shall not engage in any actions or activities that constitute self-dealing with its obligations under this Agreement. Self-dealing shall mean conduct by Consultant that consists of taking advantage of Consultant's position or interest in this Agreement and acting for Consultant's own interests rather than for the interests of the City. An example of self-dealing is making separate arrangements with clients to negotiate sponsorships to the advantage of the client and/or Consultant, and/or disadvantage of City. In the event that Contractor discovers or learns of any potential conflict of interest between its representation of another client and its representation of City, Contractor shall immediately disclose it in writing to City. Consultant shall not request or accept any compensation from any actual or potential sponsor or other third party in connection with (i) its services under this Agreement, or (ii) any sponsorship agreement that is entered into by City.
- 3.3.6 Consultant shall provide City with a template(s) sponsorship agreement that incorporates the industry's best practices.
- 3.3.7 Subject to Section 3.3.2, Consultant shall negotiate and provide to City draft business terms for potential sponsorship agreements and review and provide advice with respect to proposed sponsorship agreements prior to any necessary City Council approval; provided, Consultant shall have no right or power to negotiate or enter into any agreement in the name of or on behalf of City, make any representations, warranties or agreements on behalf of City, or to otherwise obligate or bind City in any manner. City shall have the right to accept or reject any proposed sponsorship agreement at City's discretion. Such determination will be made by the Director and such determination will not be unreasonably withheld, conditioned or delayed.
- 3.3.8 Consultant shall submit a Pipeline Report to City for approval monthly throughout this Agreement.
- 3.3.9 Consultant shall perform all services under this Agreement in conformance with generally accepted industry standards that are usual and customary between a client and a marketing agency in such relationships. Consultant shall use its best efforts to apply all of its skill and experience to perform its duties under this Agreement.
- 3.3.10 Consultant shall be responsible for all conduct and actions of any agents, employees, consultants or representatives employed by Consultant to provide the services set forth in this Agreement. Consultant shall be

responsible for all compensation, fees and expenses associated with such employees, consultants, agents and representatives.

3.4 All work performed by Consultant hereunder shall be performed to the satisfaction of the Director. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall make final payment for any work completed for the prior thirty (30) days before work product was deemed unsatisfactory and City elects to terminate under Section 7.3.3.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance of all services and activities set forth in this Agreement in a satisfactory and efficient manner, as determined solely by Director, City agrees to pay Consultant upon the submission by Consultant of dated invoices indicating work performed and completed in accordance with the following:

- 4.1.1 City shall pay to Consultant a retainer in the amount of TWELVE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$12,500.00) per month.
- 4.1.2 City shall pay to Consultant a commission of twenty percent (20%) of all CSR Revenue, except for Alamodome naming rights.
- 4.1.3 City shall pay to Consultant a commission of ten percent (10%) of all CSR Revenue for Alamodome naming rights.
- 4.1.4 City shall pay to Consultant a commission of ten percent (10%) of all In-Kind CSR Value.

4.2 Commissions shall be due and payable to Consultant only:

- 4.2.1 for new sponsorship agreements in new sponsorship categories that commence during this Agreement, and within eighteen (18) months of the expiration or termination of this Agreement for sponsorship opportunities identified in the negotiating, selling, reviewing and prospecting sales stages during this Agreement, as evidenced on Consultant's Pipeline Report;
- 4.2.2 for existing sponsorship agreements secured by City prior to the commencement of this Agreement, if City engaged Consultant for assistance and Consultant is responsible for net increases in CSR Revenue, but Consultant's percentage commission shall be limited to those net increases in CSR Revenue secured during renewals, renegotiations or additional sales to such sponsors;

- 4.2.3 as CSR Revenue is paid to City, and shall be paid to Consultant on a monthly basis beginning in the month following the month in which City first receives CSR Revenue. City, at its election, may pay Consultant a lump sum covering all future payments due for any or all sponsorship agreements compensable under Section 4.1; and
- 4.2.4 any renewals or extensions provided for in the initial agreements secured by Consultant, which are entered into by City during the term of this Agreement or after termination of this Agreement and are substantially similar to those initial agreements. Notwithstanding the foregoing, it is the understanding of the Parties that Consultant shall be entitled to commissions for all sponsorship agreements, including Alamodome naming rights, only for the term of those agreements, including any renewals and extensions, or a maximum of fifteen (15) years, whichever is longer.

4.3 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The Parties hereby agree that all compensable expenses of Consultant have been provided for in Sections 4.1 and 4.2 of this Agreement.

4.4 Consultant shall invoice City within ten (10) business days of the conclusion of each month of the Term of the Agreement for all services it provided under this Agreement. Such invoices shall be based on the payment terms set forth in Sections 3.2.2 and 4.1 of this Agreement. The information contained in such invoices shall be in such detail as may be required by City. Upon approval of the invoices by City, City shall pay Contractor within thirty (30) business days of receipt, subject to Section 3.4.

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the

services rendered hereunder (hereafter referred to as “documents”), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

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

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

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

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

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

VII. TERMINATION

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

7.2 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one or more the following events, which shall constitute an Event for Cause under this Agreement, and if City terminates this Agreement

pursuant to this provision, then City shall not be responsible to Consultant for any further compensation as provided in Article IV Compensation to Consultant.

- 7.2.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XI Assignment and Subcontracting below.
- 7.2.2 If by the end of the first Agreement Year Consultant does not generate a minimum of TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$250,000.00) in aggregate gross sponsorship revenues.
- 7.2.3 As reasonably determined by City should Consultant a) by act or omission, engage in conduct that disparages or reflects negatively on City and causes significant harm to City, or b) represent that it has authority beyond that expressly allowed pursuant to this Agreement.
- 7.2.4 Failure of Consultant to comply with federal, state and local laws and regulations.

7.3 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this Section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have thirty (30) business days after receipt of the written notice, in accordance with Article VIII Notice, to cure such default. If Consultant fails to cure the default within such thirty-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement.

- 7.3.1 Bankruptcy or selling substantially all of company's assets;
- 7.3.2 Failing to perform or failing to comply with any covenant herein required;
- 7.3.3 Performing unsatisfactorily, except as provided for in Section 7.2.2.

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

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

written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

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

7.7 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement. City shall be obligated to pay commissions to Consultant beyond the term of this Agreement, if applicable, if the then-current terms of commercial sponsorship agreements extend beyond the term of this Agreement. City shall be obligated to pay these commissions to Consultant unless this Agreement is terminated under Section 7.3.

7.8 As provided for in Article V Ownership of Documents, City owns all documents produced under this Agreement, as well as the plan produced by Consultant under a separate agreement. Upon termination, City may elect to implement the plan or contract with any of the entities listed in any Pipeline Report on its own or through another contractor and Consultant shall only be entitled to commissions as set forth in Section 4.2.1.

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

VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

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

San Antonio, Texas 78296-1809

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

IX. INSURANCE

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

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

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

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises operations * b. Independent Contractors c. Products/completed operations	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

d. Personal Injury e. Contractual Liability f. Damage to property rented by you	f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.

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

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

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

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

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

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

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

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

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

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

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

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

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

X. INDEMNIFICATION

10.1 **CONSULTANT covenants and agrees to INDEMNIFY, DEFEND and HOLD HARMLESS CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, intellectual property right infringement or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONTRACTOR OR SUBCONTRACTOR OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES. THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS ELECTED OFFICIALS, OFFICERS OR EMPLOYEES. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED**

COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

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

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

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

XI. ASSIGNMENT AND SUBCONTRACTING

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

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

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the

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

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

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

XII. INDEPENDENT CONTRACTOR

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

XIII. CONFLICT OF INTEREST

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

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

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

XIV. AMENDMENTS

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

XV. SEVERABILITY

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

XVI. LICENSES/CERTIFICATIONS

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

XVII. INTELLECTUAL PROPERTY

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

17.2 For the term of this Agreement, Consultant shall have a non-exclusive license to use the Alamodome name, logo and trademarks in sales and marketing used in connection with the services being provided under this Agreement. Any other use of the Alamodome name,

logos or trademarks shall require the prior written approval of the Director. At any time, City may, in its sole discretion, direct Consultant to stop using City's name for the purposes listed in this Section by written notice to Consultant.

17.3 All existing intellectual property, including trademarks and copyrights, shall belong to their respective owners. No transfer is intended by this Agreement.

17.4 Consultant hereby grants City a non-exclusive, perpetual license to use all copyright and other intellectual property rights necessary for City to use all of Consultant's advertising and marketing materials developed by or for Consultant, or on behalf of City, for the services hereunder. This includes, but is not limited to, all preliminary sketches, layouts, copy, "commercial" material, films, artwork, photographs, drawings, transcriptions, ideas, designs, products, writings, business concepts, plans, projections, and other similar items.

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

XVIII. COMPLIANCE

18.1 Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XIX. NONWAIVER OF PERFORMANCE

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

XX. LAW APPLICABLE

20.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE

IN BEXAR COUNTY, TEXAS.

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

XXI. LEGAL AUTHORITY

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

XXII. PARTIES BOUND

22.1 This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for in this Agreement.

XXIII. CAPTIONS

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

XXIV. ENTIRE AGREEMENT

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

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

CITY:
CITY OF SAN ANTONIO

CONSULTANT:
PREMIER PARTNERSHIPS

Sheryl L. Sculley
City Manager

Randy Bernstein
President & CEO

ATTEST:

Approved as to Form:

Leticia M. Vacek
City Clerk

City Attorney

Exhibit I: City Advertising Policy Guidelines

Exhibit I

City Advertising Policy Guidelines

The purpose of the marketing program and the sale of advertisements by the City of San Antonio is to generate revenue. To achieve this purpose, the City must make certain reasonable content-based distinctions in order to preserve advertising space for the intended use of raising money.

These guidelines apply to the sale of advertising space in City facilities and on City property that are non-public forums. These include, but are not limited to the Alamodome, and other applicable City-owned buildings and facilities. A non-public forum is one that is not traditionally open for public discourse. Such a forum is not created by inaction or by permitting limited discourse. A government creates a public forum only by intentionally opening a nontraditional forum for public discourse. That is not the intent of the City of San Antonio in initiating any activities governed by these guidelines. The advertising and marketing measures of the City of San Antonio are not meant to designate any of the advertising spaces as public forums for all expressive activity, but to reserve them for commercial speech. The City of San Antonio is acting in a proprietary capacity to raise money.

The word “advertise,” and any of its forms or derivatives, including the word “advertisement,” shall mean the depiction or presentation on any personal property, sign, bench or fixed or permanent structure of any name, word, statement, drawing, picture, painting, mark, symbol, motto or slogan for the purpose of drawing attention to a business, trade, product or activity and/or inducing the purchase or use of any specific item of commerce.

Only advertisements that propose a commercial transaction will be considered by the City. A commercial advertisement is one that has as its sole purpose the promotion of a product for sale or a service for hire, does not convey, whether expressly or impliedly or intentionally or unintentionally, any message regarding any political matter, social or religious issue or viewpoint of any person or any entity and would not cause the City’s property upon which the add is placed to become a public forum.

All advertisements must maintain the appearance of neutrality on controversial issues.

The City reserves the right to deny advertising space to any entity when its use does not serve the best interest of the City.

The City must approve of the type, location, size, content and duration of an advertisement prior to its placement.

Advertisements deemed objectionable by the City after placement, regardless of prior approval by the City, shall not be used and shall be immediately removed by the Advertiser at the Advertiser’s sole expense.

No advertisements shall be permitted that the City deems are lewd, obscene, vulgar or unsuitable for immature audiences.

No advertisement shall be permitted that is false, misleading or deceptive or that relates to unlawful or illegal goods, services or activities.

No advertisement shall be permitted that promotes or depicts violence or anti-social behavior or presents a danger of causing riot, disorder or other threat to public safety, peace or order.

No advertisement shall be permitted that holds up an individual, group of individuals or an entity to public criticism, derision or embarrassment or that defames an individual, group of individuals or an entity.

Advertisement for certain products or services shall not be permitted:

- NC-17 or R-rated movies
- gambling or gambling aids
- tobacco products
- alcohol products (advertisements for such products may be permitted in certain facilities when in the best interest of the City and deemed appropriate by the City)
- birth control products or information
- drug paraphernalia
- pornography
- adult-only entertainment or sexually-oriented businesses
- political advertising
- religious advertising
- pawn shops
- massage parlors
- tattoo parlors
- check cashing businesses
- firearms

Advertisements may not represent a product or service which presents a conflict of interest with any policy, objective or mandate of the City, including these guidelines.

Advertisements may not be placed by a firm awaiting approval from the City Council on any matter unrelated to these guidelines, a firm which operates in an industry regulated by the City or a firm with a pending lawsuit against the City.

Advertising space sold under these guidelines is reserved solely for commercial advertising for products and services that do not directly compete with an existing commercial interest of the City.

These guidelines shall be consistently enforced and an advertisement should never be excluded based on the viewpoint it advocates.

The City may enter into contracts or agreements with private individuals or organizations to provide advertising space or donor recognition on City owned real and personal property as may be described in these guidelines in exchange for cash, equipment, supplies services or other

valuable consideration.

Any such contract or agreement shall be subject to the laws and regulations of the United States, the State of Texas and local ordinances, codes, regulations and thee guidelines.

No such contract or agreement shall permit an advertisement that in any way gives the appearance or impression that any commercial product or service is endorsed or recommended by the City or any of its agencies, departments or employees. This shall not prevent the City from licensing a commercial product or service to use the phrase “the official _____ of the City of San Antonio” or a similar phrase.

The City reserves the right to amend these guidelines at any time that it deems necessary and as the social norms of the San Antonio community may dictate.