

AMENDMENT to the
LICENSE AGREEMENT FIESTA EVENT AT MARKET SQAURE

This Amendment to the License Agreement Fiesta Event at Market Square (“Amendment”) is entered into by and between the CITY OF SAN ANTONIO (“CITY”), acting by and through its City Manager pursuant to Ordinance No. 2021-_____, and EL CONSEJO REAL DE REYES FEOS ANTERIORES, A Texas Non-Profit Corporation.

WHEREAS, the CITY and EL CONSEJO REAL DE REYES FEOS ANTERIORES, A Texas Non-Profit Corporation entered into the License Agreement Fiesta Event at Market Square (“Agreement”) as authorized by Ordinance No. 2010-12-09-1035, passed and approved by the San Antonio City Council on December 9, 2010; and

WHEREAS, the parties amended the Agreement three times. Ordinance No. 2014-03-06-0135 resolved a conflict between timing of events and Easter of that year. Ordinance No. 2014-12-11-1023 approved an extension of the term for an additional 5 years and made minor modifications. Ordinance No. 201900109105 revised the Hours of Operations and Street Closures and extended the license to August 31, 2030; and

WHEREAS, due to the COVID-19 pandemic Fiesta 2020 and Fiesta Event at Market Square 2020 were canceled; and

WHEREAS, Fiesta 2021 and Fiesta Event at Market Square 2021 are delayed from April to June; and

WHEREAS, Fiesta Event at Market Square 2021 will operated in a limited manner with limited capacity to ensure public health and safety due to COVID-19 pandemic; and

WHEREAS, the CITY and EL CONSEJO REAL DE REYES FEOS ANTERIORES for Fiesta Event at Market Square 2021 agree to amend the License Agreement for year 2021; and

WHEREAS, said amendments to License Agreement is for Year 2021 only and does not affect proceeding Years; and

WHEREAS, a copy of the Agreement is attached hereto as Exhibit “A” and incorporated into this Amendment for all purposes; and

WHEREAS, said amendment requires the prior approval of CITY; and

WHEREAS, amending the LICENSE is in CITY’s and EL CONSEJO REAL DE REYES FEOS ANTERIORES’s best interest.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained below, CITY and EL CONSEJO REAL DE REYES FEOS ANTERIORES agree to amend the Agreement for year 2021 as follows:

1. Section 3 is amended as follows:

3. HOURS OF OPERATION AND STREET CLOSURES

3.1 Dates and Hours of Operation: LICENSEE shall operate Event and conduct its set up and tear down operations according to dates and times following:

Hours of Operation

Daily Fri 6/18 – Sun 6/27

10 am – 12 am

Saturdays Only 6/19 & 6/26

10 am to 1am

Booth Set-Up

Mon 6/14 – Wed 6/16

8 an – 5 pm

Booth Load in

Thursday 6/17

8am to 5pm

Tear-Down

Mon 6/28 12am– Wed 6/30 5pm

Power washing midnight – 5qm each night

2. Section 5 is amended as follows:

5.1 LICENSEE shall pay the following amounts to the City, subject to the terms and conditions in 5.4 herein, which cumulatively shall referred to as License Fee:

5.1.1 A Minimum Annual Fee of Zero Dollars for year 2021 of the Agreement.

5.1.2 Fifty Percent (50%) of all revenues for year 2021 (“Percentage License Fee”).

5.1.3 \$0.00 for every serving of beer sold during the event for year 2021 (“Beer License Fee”).

5.1.4 \$0.00 for every serving of non-alcoholic beverages sold during the Event for year 2021 (Non-alcoholic Beverage License Fee”).

5.4 LICENSEE shall pay the License Fee as follow;


5.4.2 The Percentage License Fee shall be delivered to City Representative no later than July 30, 2021.

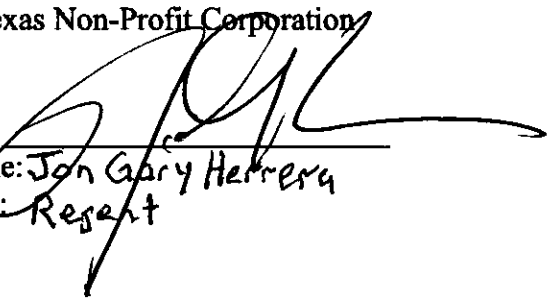
3. With CITY approval, LICENSEE shall be allowed in 2021 to control access into Fiesta Event at Market Square with perimeter fencing. Perimeter fencing including design, location, and materials must be approved in advance and in writing by the CITY'S City Center Development and Operations Director or his designee.

ACCEPTED and AGREED TO in all things this ____ day of ____, 2021.

CITY OF SAN ANTONIO

EL CONSEJO REAL DE REYES
FEOS ANTERIORES,
A Texas Non-Profit Corporation

BY : 
City Manager

BY: 
Name: Jon Gary Herrera
Title: Regent

ATTEST:

APPROVED AS TO FORM:


for City Attorney

electronically 05/20/2021
11:13 am

EXHIBIT "A"
TO
AMENDMENT TO LICENSE AGREEMENT TO
FIESTA EVENT AT MARKET SQUARE

SW/mgc
12/09/10
Item# 31

AN ORDINANCE 2010-12-09-1035

AUTHORIZING A FIVE-YEAR AGREEMENT WITH EL CONSEJO REAL DE REYES FEOS ANTERIORES DBA REY FEO CONSEJO EDUCATIONAL FOUNDATION TO CONDUCT THE FIESTA EVENT AT MARKET SQUARE.

* * * * *

WHEREAS, since 2004 the San Antonio Parks Foundation (SAPF) has had a license agreement with the City to conduct the 10 day Fiesta event at Market Square called Fiestas Fantasias, which has included live entertainment and food and drink booths; and

WHEREAS, on November 5, 2009, City Council authorized a one year extension of the SAPF license agreement; and

WHEREAS, at that time, City staff indicated a Request for Proposals (RFP) would be issued with the goal of identifying a new organization to produce the Fiesta event in Market Square without the City's financial support for security and crowd control for a five year period beginning in 2011; and

WHEREAS, on March 24, 2010, the Downtown Operations Department briefed the Economic and Community Development City Council Committee on the RFP, security and crowd control costs for the event, and plans to provide financial support to the SAPF, depending on the outcome of the RFP process; and

WHEREAS, if no acceptable proposals were received, the City would continue its relationship with the SAPF to conduct the Market Square Fiesta event; and

WHEREAS, if a new organization was selected to conduct the Fiesta event at Market Square, the City would contribute \$100,000.00 annually to the SAPF to ensure their continued financial viability in support of fundraising efforts for the San Antonio parks system; and

WHEREAS, the RFP was issued April 4, 2010 and two proposals were received; one proposal was disqualified for failure to submit required documents; and

WHEREAS, El Consejo Real de Reyes Feos Anteriores dba Rey FEO Consejo Educational Foundation submitted a proposal and the Downtown Operations Department recommends that the City enter into an agreement based on that proposal; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the Downtown Operations Department or her designee is hereby authorized to execute a five-year agreement with El Consejo Real De Reyes Feos Anteriores dba Rey FEO Consejo Educational Foundation to conduct the Fiesta event at Market Square. A copy of said agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

SW/mgc
12/09/10
Item# 31

SECTION 2. Funds generated by this ordinance will be deposited into Fund 29604001, Internal Order 219000000151 and General Ledger 4407700.

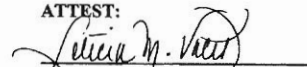
SECTION 3. The financial fiscal allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

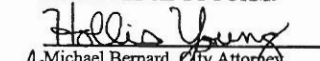
PASSED AND APPROVED this 9th day of December, 2010.


M A Y O R
Julián Castro

ATTEST:


Leticia M. Vadek, City Clerk

APPROVED AS TO FORM:


for Michael Bernard, City Attorney

**FIESTA EVENT AT MARKET SQUARE
LICENSE AGREEMENT**

BY AND BETWEEN

CITY OF SAN ANTONIO

AND

**EL CONSEJO REAL DE REYES FEOS ANTERIORES, DBA REY FEO CONSEJO
EDUCATIONAL FOUNDATION**

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LICENSE AGREEMENT FIESTA EVENT AT MARKET SQUARE

This License Agreement ("Agreement") is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting herein through its City Manager pursuant to Ordinance No. 2610-12-07-1035 passed and approved on the 9TH OF DECEMBER, 2010, (hereinafter referred to as "CITY"), and El Consejo Real de Reyes Feos Anteriores, DBA Rey Feo Consejo Educational Foundation, a Texas Non-Profit Corporation, (hereinafter referred to as "LICENSEE"), acting by and through its duly authorized officers, WITNESSETH.

1. GRANT OF LICENSE

- 1.1 CITY, for and in consideration of the payment of the license fee hereinafter set forth and the covenants and promises herein contained to be kept, performed and observed by LICENSEE, does hereby grant to LICENSEE, and LICENSEE does accept, exclusive rights for the operation of a Fiesta Event at Market Square ("Event"), the right to use and occupy San Saba Street, Hidalgo Plaza, Concho Plaza, Mariachi Plaza and Gateway Plaza as shown on the attached Exhibit A as well as additional locations necessary for support equipment (such as portable toilets) as approved by the City Representative in the various Plans presented by LICENSEE for approval ("Premises" or "Licensed Premises"), during the dates and times approved by City according to the terms of this Agreement.
- 1.2 City Representative shall be the Director of the Downtown Operations Department. City Representative shall have full authority to make all required approvals on behalf of City and to take all necessary administrative actions unless otherwise indicated in this Agreement.
- 1.3 LICENSEE Representative shall be Board Regent. LICENSEE Representative shall have full authority to make all required approvals on behalf of LICENSEE and to take all necessary administrative actions.

2. SCOPE OF SERVICES

- 2.1 LICENSEE agrees to perform all duties as defined in the Scope of Services attached hereto as **Exhibit B**.
- 2.2 City shall have authority throughout the term of this agreement to require LICENSEE to perform any and all of LICENSEE'S commitments contained in LICENSEE'S Proposal dated June 4, 2010 which was issued in response to the City's RFP for Operation of Fiesta Event at Market Square ("Proposal"). Such commitments shall be fully binding on LICENSEE as covenants and agreements of LICENSEE under this contract.
- 2.3 LICENSEE is prohibited from making any other use of the Premises not contained in the Scope of Service attached hereto as Exhibit B and LICENSEE'S Proposal dated June 4, 2010.

3. HOURS OF OPERATION AND STREET CLOSURES

- 3.1 Dates and Hours of Operation: LICENSEE shall operate the Event and conduct its set up and tear down operations according to the dates and times in the following table:

2011	2012	2013	2014	2015
Hours of Operation	Hours of Operation	Hours of Operation	Hours of Operation	Hours of Operation
Fri 4/8 – Fri 4/15 10 am to 12 am	Fri 4/20 – Fri 4/27 10 am to 12 am	Fri 4/19 – Fri 4/26 10 am to 12 am	Fri 4/18 – Fri 4/25 10 am to 12 am	Fri 4/17 – Fri 4/24 10 am to 12 am
Saturday 4/16 10 am to 1 am	Saturday 4/28 10 am to 1 am	Saturday 4/27 10 am to 1 am	Saturday 4/26 10 am to 1 am	Saturday 4/25 10 am to 1 am
Sunday 4/17 10 am to 12 am	Sunday 4/29 11 am to 12 am	Sunday 4/28 10 am to 12 am		Sunday 4/26 10 am to 12 am
Booth Set-Up	Booth Set-Up	Booth Set-Up	Booth Set-Up	Booth Set-Up
Mon 4/4 – Wed 4/6 8 am to 5 pm	Mon 4/16 – Wed 4/18 8 am to 5 pm	Mon 4/15 – Wed 4/17 8 am to 5 pm	Mon 4/14 – Wed 4/16 8 am to 5 pm	Mon 4/13 – Wed 4/15 8 am to 5 pm
Booth Load in	Booth Load in	Booth Load in	Booth Load in	Booth Load in
Thursday 4/7 8 am to 5 pm	Thursday 4/19 8 am to 5 pm	Thursday 4/18 8 am to 5 pm	Thursday 4/17 8 am to 5 pm	Thursday 4/16 8 am to 5 pm
Tear-Down	Tear-Down	Tear-Down	Tear-Down	Tear-Down
Sun 4/17 12am-Mon 4/18 5pm	Sun 4/29 12am-Mon 4/30 5pm	Sun 4/28 12am-Mon 4/29 5pm	Sat 4/26 12am-Sun 4/27 5pm	Sun 4/26 12am-Mon 4/27 5pm
Mon 4/18 – Wed 4/20 Power washing midnight – 5 am each night	Mon 4/30 – Wed 5/2 Power washing midnight – 5 am each night	Mon 4/29 – Wed 5/1 Power washing midnight – 5 am each night	Mon 4/28 – Wed 4/30 Power washing midnight – 5 am each night	Mon 4/27 – Wed 4/29 Power washing midnight – 5 am each night

- 3.2 Temporary closure of San Saba Street from West Commerce to Dolorosa Street.:

- 3.2.1 One (1) week prior to the Event: Setup; the east lane of San Saba will be closed for booth setup on Monday beginning at 12:00 noon; the west side sidewalk will also be closed for booth setup. One traffic lane will remain open down the middle of the street; pedestrian access will be maintained on the street in front of the closed sidewalk; the east side sidewalk shall remain open.
- 3.2.2 During Fiesta Week the street will be closed on Friday the official start of Fiesta Week at 9:00 a.m. through the Monday after Fiesta. At 8:00 a.m. on this same Monday after Fiesta and for each year of this license agreement, center traffic lane will open but the east side lane of San Saba Street and the west side sidewalk will remain closed for booth tear down until 5:00 PM.
- 3.2.3 Subject to authorization by City ordinance San Saba Street will be closed. Access for emergency vehicles will be ensured at all times, as well as for traffic needs while the street is open. LICENSEE is responsible for acquiring and payment of barricades.
- 3.3 LICENSEE will be allowed to make use of the Market Square Fiesta Room and/or Administration Conference Room for the administrative requirements to produce the event at the discretion of City Representative. Approval for use of these rooms will not be unreasonably withheld by the City Representative.

4. VACATING THE PREMISES

- 4.1 Not later than 5:00 p.m. on the Monday following the close of the Event, LICENSEE shall vacate PREMISES and remove LICENSEE'S effects at LICENSEE'S sole cost and expense. Not later than 5:00 AM on the Wednesday following the close of the Event, LICENSEE shall return the Premises to original condition.

5. CONSIDERATION

- 5.1 LICENSEE shall pay the following amounts to City, subject to the terms and conditions in 5.4 herein, which cumulatively shall be referred to as the License Fee:
 - 5.1.1 A Minimum Annual License Fee of One Hundred and Thirty-Five Thousand Dollars (\$135,000.00) per year of this Agreement
 - 5.1.2 Fifty Percent (50%) of net revenues above Two Hundred and Seventy Thousand Dollars (\$270,000.00) ("Percentage License Fee").
 - 5.1.3 \$0.75 for every serving of beer sold during the event ("Beer License Fee").
 - 5.1.4 \$0.25 for every serving of a non-alcoholic beverage sold during the event ("Non-alcoholic Beverage License Fee").
- 5.2 Net Revenue shall be defined as Gross Revenues received by LICENSEE less Direct Event Expenses paid.

- 5.2.1 Gross Revenues shall be defined as all revenues and contributions of cash, services or personal property received by LICENSEE as a direct result of this License Agreement, including without limitations, revenue from LICENSEE'S sale of goods and services, advertising, vendor fees and revenue for concession rights received by LICENSEE from contractors. It does not include the gross sales of LICENSEE'S concession contractors.
 - 5.2.2 LICENSEE may solicit donations for goods and services; however, LICENSEE shall submit a final list of all donations, including any agreement to provide services or goods in exchange for such donations, and also including an estimated cash value of any donations of goods or services to the City Representative prior to the first date of the event. City Representative shall have authority to reject any valuations or proposed donations included on such list. LICENSEE shall have seven (7) days file a written protest to the City Representative for any determinations made in this section. Failure to timely submit such protest will constitute approval of City Representative's decision. If the City Representative receives a timely protest, the City Representative shall submit such protest to a review team to be determined by the City Manager's Office. The City shall hear and rule on any protest filed in this section in a reasonable time and manner. All donations shall be considered revenue. LICENSEE acknowledges that any bartered or exchanged goods or services may be considered taxable and that any tax that may be assessed or due is the responsibility of LICENSEE.
 - 5.2.3 Direct Event Expenses shall be ordinary and necessary expenses incurred by LICENSEE for the production of the event. Any refunds or credits received by the LICENSEE from outside vendors will offset any direct event expenses. It does not include expenses incurred by LICENSEE'S contractors, licensees or assignees. Direct Event Expenses shall not include any part of the License Fee paid to the City under the terms of this Article 4 "Consideration." City Representative shall have authority to disallow any expenses as ineligible for inclusion in the calculation of Direct Event Expenses in the event that City Representative determines that such expenses are not ordinary or not necessary expenses. City Representative shall provide written explanation to LICENSEE as to basis for any denial of any expense submitted by LICENSEE.
 - 5.2.4 Estimates will not be used for any revenue and expense items used to calculate net revenue.
- 5.3 LICENSEE shall require any contractor that remits payment to LICENSEE based on a percentage of net sales, to submit to LICENSEE for prior approval, expenses that are to be used in the calculation of net sales. LICENSEE shall require the contractor to calculate the net sales amount based on the same standards as those between CITY and LICENSEE.
- 5.4 LICENSEE shall pay the License Fee as follows:
- 5.4.1 The Minimum Annual License Fee shall be delivered to the City Representative no later than May 3rd of each event year.
 - 5.4.2 The Percentage License Fee, Beer License Fee, and the Non-alcoholic Beverage License Fee shall be delivered to the City Representative no later than August 31st of each event year.

- 5.5 LICENSEE shall pay any and all taxes and/or assessments applicable to its operations hereunder and shall instruct all exhibitors regarding their responsibilities related to payment of sales tax. City assumes no liability whatsoever for such taxes, assessments or fees.
- 5.6 LICENSEE hereby covenants and promises in consideration of grant of license to use net proceeds consistent with the mission and by-laws of LICENSEE that provides a direct public purpose, specifically to include a scholarship program for San Antonio youths funded in the minimum amount of \$20,000, to be administered through the Rey Feo Scholarship Committee Inc.
- 5.7 LICENSEE hereby also agrees to secure and maintain a 501(c)3 non-profit status as reviewed and granted by the Internal Revenue Service (IRS). LICENSEE agrees to comply with all terms and conditions of its 501(c)3 status.
- 5.8 LICENSEE agrees to provide a damage deposit in the amount of Ten Thousand dollars (\$10,000.00) in the form of either a cashiers check or certified check to ensure compliance with the terms of this agreement. LICENSEE shall remit this deposit not later than April 1 in each Event year and CITY shall release this damage deposit, less deductions if any, along with a list of such deductions, upon the satisfactory restoration of the licensed premises at the sole discretion of the CITY through the City Representative, provided restoration and all fees due under this License Agreement have been made by August 31.

6. USE OF PREMISES

- 6.1 The PREMISES shall be occupied and used by LICENSEE solely for the operation of the Event and for no other purpose. LICENSEE agrees and specifically understands that this License is confined to the privilege to use the PREMISES set forth herein and that the permission herein given does not grant LICENSEE any interest or estate in the PREMISES but is a mere personal privilege to do certain acts of temporary character upon said PREMISES, including access thereto at all times during the terms of this License
- 6.2 LICENSEE shall not charge an admission fee for the Event.
- 6.3 LICENSEE agrees to insure that exhibitors and individuals under its control and who are authorized by the LICENSEE to participate in the Event shall in no way obstruct ingress or egress or limit accessibility to the PREMISES by the general public or by those tenants of the CITY having leasehold interests in or about the PREMISES at any time. LICENSEE shall allow nine (9) linear feet of space or the width of the primary entrance to tenant-leased space, whichever is greater, for ingress and egress to shops.
- 6.4 The LICENSEE'S policies and regulations will be submitted to the City Representative for review and approval by February 15 of each event year. Such policies shall include a Food and Beverage Concession Booth Operator Selection Plan. LICENSEE may sublease and assign space to vendors, exhibitors/sponsors, underwriters or individuals but must do so in strict compliance with the Food and Beverage Concession Booth Operator Selection Plan. LICENSEE agrees to a fair and equitable distribution of space to both food and other vendors seeking participation in the Event.. There will be no discrimination on the basis of race, color, religion, political affiliation or belief, national origin, gender, age or disability.

- 6.5 LICENSEE will provide for review and approval to the City Representative by February 15 of each event year, a map identifying the location of all booths, entertainment stages, event entrances, portable restrooms (porta-johns) and fixed equipment to be used in the production of this event.
- 6.5.1 LICENSEE agrees that the number and locations of booth space will be limited to the extent of compliance with applicable City codes, regulations space availability and approval of the City Representative.
- 6.5.2 LICENSEE agrees, to the greatest extent possible, to provide a variety of food and beverage products that are historically typical of the Market Square area.
- 6.5.3 CITY reserves the right to move or relocate booths and entertainment as necessary to comply with Health and Safety reasons at any time during this agreement.
- 6.6 LICENSEE shall be responsible for the administration and oversight of alcoholic and non-alcoholic beverage concessions within the demised premises and will insure fiscal accountability as required in this License Agreement.
- 6.7 LICENSEE shall preserve space for a public right-of-way along GATEWAY PLAZA, MARIACHI PLAZA, CONCHO PLAZA, HIDALGO PLAZA, and SAN SABA STREET as described by the diagram attached hereto and incorporated herein as **Exhibit A**, an area to follow a path designated by the CITY for safe passage of emergency vehicles. LICENSEE shall keep said right of way free of obstructions in the form of either fixed or movable objects and shall not allow patrons to queue, or wait for entrance into LICENSEE'S event, in said public right of way.
- 6.8 LICENSEE agrees to erect and pay for temporary fencing as required by CITY to ensure the public's safety and protection of property around the perimeter of the demised premise and/or other areas within the demised premise as identified by the CITY.
- 6.9 **SBEDA Program.** The CITY has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the CITY. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement
- 6.9.1 SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.
- 6.9.2 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

- 6.9.3 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE’s participation does not count toward the SE utilization goal.
- 6.9.4 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that were submitted with LICENSEE’s Proposal.

6.10 For this Agreement, the Parties agree that:

- 6.10.1 The terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and
- 6.10.2 The failure of LICENSEE or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.
- 6.10.3 Failure of LICENSEE or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.
- 6.10.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Attachment C shall constitute a material breach of the SBEDA Program and this Agreement.
- 6.10.5 LICENSEE shall pay all suppliers and subcontractors identified in GFEP in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by LICENSEE to the CITY Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

6.11 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement:

- 6.11.1 Failure of LICENSEE to utilize an SE, without good cause, that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function; or
- 6.11.2 Modification or elimination by LICENSEE of all or a portion of the scope of work attributable to an SE, without good cause, upon which the Agreement was awarded;

6.11.3 Termination by LICENSEE of an SE, without good cause, originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so;

6.11.4 Participation by LICENSEE in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement;

6.11.5 Good cause as used in this subsection includes but is not limited to SE no longer in business or no longer provides goods or services for which they were hired; SE has filed for bankruptcy; SE no longer has the required permits, licenses or authority to continue providing goods or services or SE has requested to be removed from providing goods or services.

6.12 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the CITY may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the SBEDA Program:

6.12.1 Terminate this Agreement for default

6.12.2 Suspend this Agreement for default

6.12.3 Withhold all payments due to the LICENSEE under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or

6.12.4 Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the CITY pursuant to the Agreement, or from any other amounts due to the LICENSEE under the Agreement;

6.13 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

6.14 The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Agreement.

6.15 *The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available.*

6.16 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the CITY to exercise in the event a LICENSEE violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or

designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

6.17 Special Provisions for Extension of Agreements. In the event the CITY extends this Agreement without a competitive Bid or Proposal process, the CITY Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:

- 6.17.1 a SBEDA Utilization Goal for the extended period; and
- 6.17.2 a modified version of the Good Faith Efforts (“Modified Good Faith Efforts Plan”) set forth in the SBEDA Program Ordinance, as amended, if LICENSEE does not meet the SBEDA Utilization Goal; and
- 6.17.3 the required minimum Good Faith Efforts outreach attempts that LICENSEE shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The LICENSEE entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall (i) subject LICENSEE to any of the remedies listed above; and/or(ii) result in a new bid or proposal request of the Agreement that was considered for extension.

7. TERM AND TERMINATION

- 7.1 The initial term of this License Agreement will commence upon the effective date of City Council approval and terminate August 31, 2015, provided, however, all provisions and requirements that cannot be completed during the indicated term shall survive termination of this License Agreement.
- 7.2 At the discretion of CITY and by approval of an ordinance by the City Council, CITY may extend the term of this License Agreement for five (5) additional Event Years, through August 31, 2020, on the same terms and conditions.

8. ACCEPTANCE AND CONDITION OF PREMISES

- 8.1 Ten (10) days prior to the event authorized herein, CITY and LICENSEE will examine the PREMISES to determine that there is in and about them nothing dangerous to life, limb or health. Upon such determination and after LICENSEE has had full opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. LICENSEE’S permitted use of the licensed Premises shall be conclusive evidence of LICENSEE’S acceptance thereof in good order and satisfactory condition, and LICENSEE hereby accepts the Licensed Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which leased. LICENSEE accepts the Premises with

the full knowledge, understanding and agreement that CITY disclaims any warranty of suitability for LICENSEE'S intended commercial purposes.

- 8.2 The CITY does not relinquish the right to control the management of Market Square facilities and to enforce all necessary and proper rules for the management and operation of the same. Representatives of the City may enter any or all of the City-owned property at any time and on any occasion. The CITY representatives shall have full authority to enforce ordinances, rules, statutes or other laws including by ejection of any person(s) violating said rules from the city-owned demised premises.
- 8.3 LICENSEE agrees that no representations, respecting the condition of the Premises, and no promises to decorate, alter, repair or improve the Premises, either before or after the execution hereof, have been made by CITY or its agents to LICENSEE unless the same are contained herein or made a part hereof by specific reference herein.

9. UTILITIES AND TOILET FACILITIES

- 9.1 LICENSEE shall be responsible for all connections to all CITY gas, water, electricity, sewer, cable TV or other utilities, if any, that may be necessary for its operations as authorized herein on the Licensed Premises. LICENSEE further agrees to pay all charges associated with effective maintenance during said event. Should connection or reconnection of any utility become necessary, LICENSEE agrees to pay any associated expenses.
- 8.1.1 LICENSEE acknowledges that the Texas Department of Transportation Ordinance prohibits open flames in the Gateway Plaza area. LICENSEE agrees to comply with this requirement and enforce same to all approved vendors in Gateway Plaza.
- 9.2 LICENSEE may install such additional TEMPORARY electrical wiring as it deems necessary to accommodate the needs of the event and LICENSEE must comply with applicable CITY Codes, including but not limited to the Uniform Building Code. All costs associated with the installation of Temporary electrical wiring and removal of such shall be borne by LICENSEE.
- 9.3 CITY will provide access to safe and operable electrical circuit breaker panels adjacent to licensed areas. Upon connection to any breaker panel used in the production of this event, LICENSEE will assume responsibility for the installation, condition and safety of all electrical connections, lines, electrical panels and associated equipment used in the production of this event by its exhibitors, vendors and food booth operators.
- 9.3.1 LICENSEE agrees to install and maintain temporary electrical service for food and vendor booths participating in the Event. Electrical installation will be performed by a licensed and bonded electrician in compliance with City electrical codes.
- 9.3.2 CITY will provide a City electrician to oversee LICENSEE'S installation of event electrical service, provided however this City electrician shall not be authorized to give LICENSEE governmental permit approval which must be sought separately by LICENSEE from the appropriate City Department.
- 9.3.3 LICENSEE agrees to reimburse the City for overtime costs incurred by the electrician if overtime is a direct result of action s by LICENSEE.**

- 9.3.4 LICENSEE will keep all electrical lines a minimum of seven feet (7') above ground level, where appropriate, and in a manner conforming to all applicable building and fire codes and in a manner which will not restrict the removal of trash as required hereinafter. LICENSEE shall not deface area buildings nor make any permanent changes to the area.
- 9.3.5 All electrical lines at ground level will be properly identified, secured and covered where exposed to the public in an effort to insure appropriate safety conditions.
- 9.3.6 All electrical requirements including permits and additional equipment necessary to sustain event, will be the responsibility of LICENSEE in accordance with City Code. Only bonded and licensed electricians may be allowed to perform any electrical work.
- 9.4 LICENSEE shall provide and maintain, at its sole cost, a minimum of eighty (80) portable toilet facilities with at least four designated for handicap use.
 - 9.4.1 LICENSEE agrees to keep clean and maintain public restroom facilities located in the El Mercado and Farmer's Market buildings beginning at 6 p.m. during the Event.

10. IMPROVEMENTS

- 10.1 LICENSEE shall not construct, or allow to be constructed, any permanent improvements or structures on the licensed Premises nor shall LICENSEE make, or allow to be made, any alterations to the licensed Premises unless approved by the City Representative.

11. MAINTENANCE OF PREMISES

- 11.1 LICENSEE shall, at all times, maintain the sidewalks adjacent to the Licensed Premises free from obstructions of any kind and shall maintain a minimum clearance of six (6) feet to the public right-of-way.
- 11.2 LICENSEE shall at all times, keep or cause to be kept the Licensed Premises and sidewalks and staging areas adjacent to the License Premises free of litter, trash, grease, paper and other waste. Licensee shall ensure same is placed in standard trash or grease containers in appropriate locations and shall conform to all applicable garbage, sanitary and health regulations of the CITY. In addition, LICENSEE shall perform the following maintenance: empty trash cans, assume costs for any extra garbage pick up, hose down the area nightly, and power wash the area at the end of the event.
- 11.3 CITY will provide all of the trash containers that are owned by the Market Square facilities and make same available to LICENSEE. LICENSEE shall provide additional containers and liners as necessary to maintain the premises free of garbage and as determined by the City Representative.
 - 11.3.1 LICENSEE shall assume the maintenance of all licensed premises, including trash collection and disposal.
 - 11.3.2 Costs for extra garbage pick ups associated with the event will be reimbursed to the CITY by LICENSEE.
- 11.4 Loading and unloading will be permitted between the hours of 6:00 a.m. and 9:30 a.m. each day of the event operations as identified in Section 3. Loading and unloading will be permitted for an

additional one and one half (1½) hours to commence one (1) hour after the close of the event. No vehicular traffic will be allowed within the event area except during loading and unloading times.

- 11.5 Other than as provided herein, LICENSEE shall be responsible for the condition of the Licensed Premises. LICENSEE shall repair any damage to the Licensed Premises caused during the Event.
- 11.6 LICENSEE will be responsible for payment of all clean up and maintenance related to the Event.
- 11.7 LICENSEE will, at the termination of each Event under this License Agreement, return the Licensed Premises to CITY in as good condition as at the commencement of the term hereof and acts of God excluded.
- 11.8 LICENSEE agrees to hold CITY harmless for any theft, damages or destruction of signs, goods and/or other property of LICENSEE. If said signs, goods and any other property placed by LICENSEE upon the Licensed Premises are not removed before 5:00 p.m. on Monday after Fiesta, then the CITY may remove same without further notice or liability therefore and shall be reimbursed by LICENSEE for said removal, storage and/or disposal costs.
- 11.9 LICENSEE shall ensure that all drinks or beverages (including beer) are dispensed only in plastic or paper containers not to exceed sixteen ounces (16 oz.) per unit.
 - 11.9.1 . For all time periods after 6 p.m., CITY agrees and covenants it shall not permit Farmers Market Plaza and El Mercado tenants to sell drinks or beverages (including beer) for prices lower than the LICENSEE. For all time periods after 6 p.m., city agrees and covenants it shall require Farmers Market Plaza and El Mercado tenants to only sell drinks or beverages (including beer) in paper or plastic containers not to exceed 16 ounces.
- 11.10 CITY administrative or maintenance supervisory staff will be present during the event to ensure compliance with all the Event maintenance and clean up requirements.
 - 11.10.1 In the event CITY is required to perform any maintenance service that is LICENSEE'S responsibility as defined herein, then LICENSEE agrees to reimburse CITY for all costs associated with said service.

12. TAXES AND LICENSES

- 12.1 LICENSEE shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees which are now or may hereafter be levied upon the Licensed Premises, or upon LICENSEE, or upon the business conducted on the Licensed Premises, or upon any of LICENSEE'S property used in connection therewith; and shall maintain in current status all Federal, State and local licenses and permits required for the operation of the event conducted by LICENSEE. Failure to comply with the foregoing provisions shall constitute grounds for termination of this License Agreement by the CITY.

13. ASSIGNMENT AND SUBLICENSING

- 13.1 LICENSEE shall not assign this License Agreement or allow same to be assigned by operation of law or otherwise, or sublicense the Licensed Premises or any part thereof without the prior written consent of CITY which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas. Any assignment or sublicensing by LICENSEE without such permission shall constitute grounds for termination of this License Agreement by the CITY.

14. DEFAULT AND REMEDIES

- 14.1 The following events shall be deemed to be events of default by LICENSEE under this License Agreement:
- 14.1.1 During the licensed event, a default occurs that is of a nature that threatens public safety or property damage or is a material breach in the operation of the Event by LICENSEE, and LICENSEE shall not cure such failure within twelve (12) hours after verbal notice to LICENSEE from City Representative or City's Manager of Market Square (or if such breach cannot be cured within twelve (12) hours, if LICENSEE does not attempt the cure within the twelve (12) hours and thereafter diligently pursue such remedy), or
 - 14.1.2 For all other times during the term of this agreement shall not cure such failure within sixty (60) calendar days after written notice thereof to LICENSEE by City.
 - 14.1.3 Failure to pay the full amount owed to City on or before the date it is due.
- 14.2 Upon the occurrence of an event of default as heretofore provided, CITY may, at its option, declare this License Agreement, and all rights and interests created by it, terminated. Upon CITY electing to terminate, this License Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or CITY, its agents or attorney may, at its option, resume possession of the Licensed Premises.
- 14.3 Any termination of this License Agreement as included herein shall not relieve LICENSEE from the payment of any sum or sums that shall then be due and payable or become due and payable to CITY hereunder, or any claim for damages then or theretofore accruing against LICENSEE hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from LICENSEE for any default hereunder. All rights, options and remedies of CITY contained in this License Agreement shall be cumulative of the other, and CITY shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this License Agreement. No waiver by CITY of a breach of any of the covenants, conditions or restrictions of this License Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

15. INDEMNIFICATION

- 15.1 **LICENSEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually 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 LICENSEE'S activities under this Agreement, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LICENSEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the 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 LICENSEE 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 THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 15.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LICENSEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LICENSEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LICENSEE of any of its obligations under this paragraph.

16. INSURANCE REQUIREMENTS

- 16.1 Prior to the commencement of any work under this Agreement, LICENSEE shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Downtown Operations Department, which shall be clearly labeled "Fiesta Event at Market Square" 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. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Downtown Operations Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 16.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City'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.

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

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Liquor Liability	\$1,000,000 per occurrence, \$2,000,000 aggregate

16.4 LICENSEE agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of LICENSEE herein, and provide a certificate of insurance and endorsement that names the LICENSEE and the CITY as additional insureds. LICENSEE shall provide the 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 contract for all purposes.

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

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

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

- 16.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, LICENSEE shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend LICENSEE's performance should there be a lapse in coverage at any

time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

- 16.8 In addition to any other remedies the City may have upon LICENSEE's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order LICENSEE to stop work hereunder, and/or withhold any payment(s) which become due to LICENSEE hereunder until LICENSEE demonstrates compliance with the requirements hereof.
- 16.9 Nothing herein contained shall be construed as limiting in any way the extent to which LICENSEE may be held responsible for payments of damages to persons or property resulting from LICENSEE's or its subcontractors' performance of the work covered under this Agreement.
- 16.10 It is agreed that LICENSEE'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 the City shall be limited to insurance coverage provided.
- 16.12 LICENSEE and any Subcontractors are responsible for all damage to their own equipment and/or property

17. PERFORMANCE GUARANTY

- 17.1 Contemporaneously with the execution of this License by LICENSEE and as condition precedent to the effectiveness of this License, for each year of the Contract, LICENSEE shall provide CITY (in form and content satisfactory to the CITY at its sole discretion) an irrevocable letter of credit (ILOC) in the amount of Fifty-thousand dollars (\$50,000.00) for the first year of the Agreement and in the amount of Seventy-five thousand dollars (\$75,000.00) for the subsequent years which shall provide security for Licensee's performance on all of its obligations hereunder. The initial ILOC will be effective for a period of one year from issuance. Subsequent ILOCs shall be due fifteen days prior to the expiration of the previous year's ILOC, and shall be required to remain effective until one hundred twenty (120) days after final expiration of this License. Any recovery by the CITY under the Letter of Credit shall be in addition to, and not in lieu of, any remedies which may be available to the CITY hereunder or under law or equity.
- 17.2 In the event that at any time during the Term, CITY shall draw all or any part of the Performance Guaranty (ILOC) pursuant to a LICENSEE Default or any other right of CITY to draw from the Performance Guaranty pursuant to the terms of this License, LICENSEE shall, within fifteen (15)

calendar days of such draw by CITY, replenish the Performance Guaranty or provide an additional Performance Guaranty in the same form and subject to the same requirements as the Performance Guaranty, so that the aggregate amount of the Performance Guaranty is Fifty-thousand dollars (\$50,000.00) for the first year of the Agreement and in the amount of Seventy-five thousand dollars (\$75,000.00) for the subsequent years. LICENSEE'S failure to do so within such time period shall constitute a Default by LICENSEE.

18. RULES AND REGULATIONS

- 18.1 LICENSEE shall observe and comply with all laws and ordinances of the CITY affecting LICENSEE'S business, including but not limited to, the CITY'S noise ordinance and the provisions concerning operation of businesses in the Downtown Central Business District. LICENSEE shall comply with CITY'S noise control ordinance. LICENSEE agrees to comply with any requests by the CITY'S park police, police officers, noise abatement officers, or other City staff member related to noise from Event operations.
- 18.2 LICENSEE, sub-licensees, vendors, representatives and assignees shall operate this event in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas, County of Bexar and the City of San Antonio, Texas.
- 18.3 Only temporary advertisements, signs, decorations or displays shall be placed in, on or about the Licensed Premises and with the prior written approval of the City Representative. LICENSEE agrees to remove all signs from the Licensed Premises when LICENSEE vacates the Licensed Premises, but no later than 5:00 on Monday after Fiesta
 - 18.3.1 LICENSEE agrees that CITY shall approve in writing, through the City Representative, all banners and large format advertising and media placements including but not limited to: inflatable balloons, posters, and electronic video displays.
- 18.4 No activity or method of operation shall be allowed in, on or about the Licensed Premises that exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:
 - 18.4.1 Nudity means total absence of clothing or covering for the human body.
 - 18.4.2 Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
- 18.5 The operation of a massage business, tanning salon, gambling casino, or gambling of any nature shall not be allowed in, on, or about the Licensed Premises.
- 18.6 Discrimination on account of race, color, sex, age, disability or national origin, directly or indirectly, in employment or in the use of or admission to the Licensed Premises is prohibited.
- 18.7 LICENSEE shall obtain parking permits from the Parking Division of Downtown Operations Department for entertainment vehicles and for beer and soda service trucks for parking on Dolorosa Street and Commerce Street ten (10) calendar days prior to event days of operation as identified in Section 3.

- 18.8 The Farmers Market Plaza parking deck is the responsibility of the Downtown Operations Department, Parking Division. Parking and unloading regulations in the plazas will be enforced by the San Antonio Police Department.
- 18.9 All booths, stands, beer equipment, ice freezers, and chemical toilets must be removed by 5:00 p.m. on the Monday after the Event..
- 18.10 LICENSEE agrees to pay all inspection fees required by the CITY: Development Services Department, Fire Department, Health Department or to require approved sub-licensees and/or vendors to pay such inspection fees; and for required parking meters for entertainment vehicles and service vehicles.
- 18.11 LICENSEE will assign an event manager to insure compliance with rules and regulations with this license agreement and provide the City Representative and the Manager of the Market Square a single point of contact. LICENSEE shall provide all contact information that shall include office and home phone, cellular phone and pager phone numbers for contact by the city staff.
- 18.12 A family-oriented entertainment program will be conducted at appropriate times throughout Fiesta Week. No taped or recorded music will be permitted as a form of primary entertainment. All costs for entertainment, including all required music licensing fees, will be incurred by LICENSEE. LICENSEE hereby agrees to FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CITY from any claims of any copyright holders for unauthorized use of copyrighted material.
- 18.13 LICENSEE will comply with City ordinances regarding noise level, stage requirements, and associated costs.
- 18.14 No carnival rides or related carnival game activities will be permitted in the Market Square complex.

19. SECURITY

- 19.1 CITY agrees to have on duty at all times during the event a sufficient number of fully licensed and qualified peace officers from the San Antonio Police Department (SAPD) serving as security and crowd control officers.
- 19.1.1 LICENSEE agrees to reimburse CITY for security services provided by SAPD officers assigned to LICENSEE'S finance room as scheduled by SAPD.
- 19.2 LICENSEE agrees to the selection and designation of a police event commander by the Office of the Chief of Police for the City of San Antonio Police Department. The police event commander shall be responsible for the development of a reasonable security and crowd control plan, subject to the approval of the Chief of Police. Additionally, the police event commander will have the responsibility for the reasonable staffing and scheduling of work and the overall supervision of the police activities during the event.
- 19.3 During the event planning and preparation stages, LICENSEE agrees to maintain close liaison with the San Antonio Chief of Police and the Chief of the San Antonio Fire Department or their assigned representatives, so as to assist said officials in carrying out their respective responsibilities in regards to the public safety.

- 19.4 LICENSEE agrees to coordinate and comply with all applicable fire safety codes, standards and/or policies, including but not limited to Fire Department and fire protection system access, and building occupant load.
- 19.5 LICENSEE shall provide six (6) raised platforms suitable for crowd control observation. It shall be within the discretion of the event commander whether the platforms are of adequate design, size and construction. The Event Commander shall determine the location of such platforms to be provided.

20. RESERVATIONS: CITY

- 20.1 CITY reserves the right to enter the Licensed Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. LICENSEE shall not be entitled to an abatement or reduction of fee consideration by reason of such entry, nor shall said entry be deemed to be an actual or constructive eviction of LICENSEE from the Licensed Premises.
- 20.2 No provision of this License Agreement shall operate in any manner to prevent CITY from permitting displays of Market Square promotional events for the benefit of the public.
- 20.3 CITY staff, Park Police, Police and other safety personnel shall have the right of entry on and into the Licensed Premises as needed to investigate any circumstances, conditions, or person. LICENSEE shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by persons in the Market Square area. LICENSEE expressly understands and agrees that CITY has not agreed to act and does not act as an insurer of LICENSEE'S property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.
- 20.4 LICENSEE agrees that the City shall own all right, title and interest in and to all world wide trademarks, service marks, trade names, domain names and trade dress (collectively referred to as the "Marks") used as part of the business at the location including, but not limited to MARKET SQUARE and FIESTA AT MARKET SQUARE, all good will of the business in connection with the use and symbolized and associated therewith and all registrations therefore including the right to recover for the past, present and future infringement of the Marks by any party or parties with the right to sue solely in the City's own name and collect damages and for the use and enjoyment of the City's successors, assigns, or other legal representatives. All use of the Marks will inure to the sole and exclusive benefit of the City. Upon termination of this Agreement or shut down of the location for any reason, Licensee agrees to discontinue all use of all Marks.
- 20.5 The LICENSEE shall provide to the City, its successors, assigns or other legal representatives, cooperation and assistance at the City's request (including the execution and delivery of any and all affidavits, declarations, oaths, samples, exhibits, specimens and other documentation as may be reasonably required): (1) in the preparation and prosecution of any application for registration or any application for renewal of a registration or assignment covering any of the Marks; (2) in the prosecution or defense of any opposition, infringement or other proceedings that may arise in connection with any of the Marks including, but not limited to, testifying as to any facts relating to the Marks assigned herein and this Assignment; (3) in obtaining any additional trademark protection for the Marks that the City reasonably may deem appropriate that may be secured under

the laws now or hereafter in effect in the United States or for all foreign countries; and (4) in the implementation or perfection of this Agreement.”

- 20.6 The City Representative shall have authority to modify the footprint of the Licensed Premises to accommodate necessary construction work or for any other reason. City agrees that if the modification in footprint results in less usable area, then City shall agree to reduce the consideration by an amount consistent with reduction in usable area.

21. CONFLICT OF INTEREST

- 21.1 LICENSEE acknowledges that it is informed that City Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in 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: the City officer or employee; his partner; child or spouse; a business entity in which he or his parent, child or spouse own ten (10) percent of more of the voting stock or shares of the business entity, or ten (10) percent of more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or parent of subsidiary business entity.
- 21.2 LICENSEE is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Part B, Section 10 of the City Ethics Code.
- 21.3 LICENSEE agrees that any board member or member of his/her immediate family involved in the professional business of promoting, managing or representing entertainers will not be involved in the soliciting or the contracting of entertainment for the Event.
- 21.4 LICENSEE agrees that no monetary compensation will be made to any of LICENSEE’s board members or any of Board members immediate families for compensation for services in the coordination and staging of the Event or for any other reasons.

22. RECORDS, REPORTS AND AUDIT RIGHTS

- 22.1 LICENSEE shall maintain, in the City of San Antonio, Texas, books and records reflecting its operations approved in this License in accordance with generally accepted accounting principles. Such books and records, together with any other documentation necessary for verification of LICENSEE’S compliance with the terms of this License, shall be made available to CITY, on request, through the Director of Finance or his representative. CITY shall have the authority to audit, examine and make excerpts or transcripts from said books, records and documentation. LICENSEE shall retain its records related to this agreement for four years following the termination of this Agreement. Records include any and all information, materials, and data of every kind and character generated as a result of the work under this Agreement, including but not limited to billings, books, general and cost ledgers, invoices, purchase orders, contracts, tax filings, and any sources of information that may in the City’s judgment have any bearing on or pertain to obligations related to this Agreement.

- 22.2 LICENSEE shall engage an independent Certified Public Accountant (CPA) to perform agreed-upon procedures to analyze and assess the accuracy of the LICENSEE'S revenues and expenses, for each Event Year and shall present for City's review and approval, the proposed engagement letter prior to entering into the engagement. Such engagement shall be conducted in accordance with the Statements on Auditing Standards (SASs) (collectively known as generally accepted auditing standards (GAAS) which are promulgated by the American Institute of Certified Public Accountants' (AICPA) Auditing Standards Board (ASB). The independent CPA shall furnish, not later than August 31 of each Event Year, the written report on agreed-upon procedures directly to the Director, Downtown Operations Department, P.O. Box 839966, San Antonio, Texas 78283-3966 with a duplicate, original to the Director, Office of the City Auditor, City of San Antonio, San Antonio, TX 78283-3966. The independent CPA must state in his or her report an opinion whether the gross and net revenue reported to the City, and the amounts paid to the City including the manner in which such money was disbursed or expended for the Event Year, were made in accordance with the applicable terms of this License Agreement. Additionally, LICENSEE agrees that the CPA shall confirm that at least \$20,000.00 in scholarship contributions have been distributed for each calendar year during this agreement.

23. SEPARABILITY

- 23.1 If any clause or provision of this License Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this License Agreement, then and in that event it is the intention of the parties hereto that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the parties to this License Agreement that in lieu of each clause or provision of this License Agreement that is illegal, invalid or unenforceable, there be added as a part of this License Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

24. NOTICES

- 24.1 Notices to CITY required or appropriate under this License Agreement shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to:

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

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

or to such other address as may have been designated in writing by City Representative from time to time. Notices to LICENSEE shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to LICENSEE at:

El Consejo Real de Reyes Feos Anteriores
1011 N. Frio Street
San Antonio, Texas 78207

or to such other address on file with the City Representative as LICENSEE may provide from time to time in writing to CITY.

25. PARTIES BOUND

- 25.1 If there shall be more than one party designated as LICENSEE in this License Agreement, they shall each be bound jointly and severally hereunder.
- 25.2 The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and such assigns as have been approved by CITY.

26. TEXAS LAW TO APPLY

- 26.1 **THIS LICENSE 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.**

27. RELATIONSHIPS OF PARTIES

- 27.1 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationships between the parties hereto other than that of CITY and LICENSEE.

28. GENDER

- 28.1 Words of any gender used in this License Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

29. CAPTIONS

- 29.1 The captions contained in this License Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this License Agreement.

30. ENTIRE AGREEMENT/AMENDMENT

- 30.1 This License Agreement, together with its attached exhibits and the authorizing ordinance, and the Proposal, constitutes the entire agreement between the parties, any other written or parole agreement with CITY being expressly waived by LICENSEE. Except as may be otherwise provided herein, should there be any conflict between the AGREEMENT and the exhibit identified in **Section 2.1**, and the Proposal, the controlling provision shall be, in descending order, (1) this AGREEMENT, (2) **EXHIBIT "B"** Scope of Services, the Proposal.
- 30.2 No amendment, modification or alteration of the terms of this License Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties

hereto. The City Representative shall have authority to approve amendments to this Agreement, provided, however City Representative shall have no authority to alter the term of the agreement, any provisions related to the consideration, the indemnity, the audit requirement, or the performance guarantee each of which shall require approval of City Council of the City of San Antonio by passage of any appropriate ordinance.

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31. AUTHORITY

31.1 The signer(s) of this License Agreement for LICENSEE hereby represents and warrants that he or she has full authority to execute this License Agreement on behalf of LICENSEE.

IN WITNESS WHEREOF, we have affirmed our signatures this 14th day of January, 20011.

CITY:

CITY OF SAN ANTONIO, a Texas
Municipal Corporation

By: 

City Manager

ATTEST:


City Clerk



LICENSEE:

EL CONSEJO REAL DE REYES
FEOS ANTERIORES,
A Texas Non-Profit Corporation

By: 

Title: Represent

APPROVED AS TO FORM:


City Attorney

Exhibit A

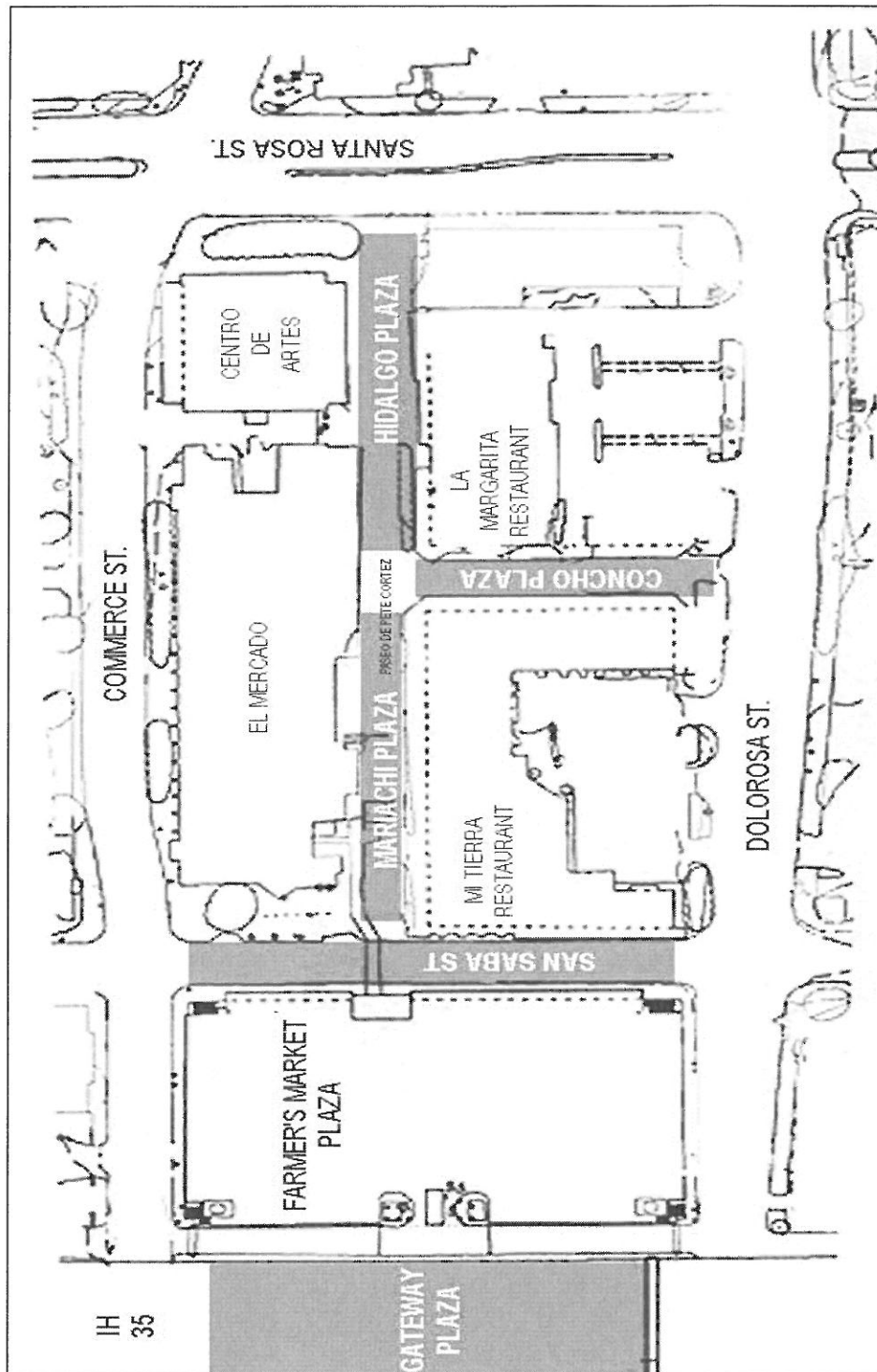


Exhibit B

Scope of Services

Initial and On-going Requirements

LICENSEE SHALL:

- A. Establish a single, separate bank account into which all receipts/revenue of any kind (including corporate sponsorships) generated by the Event shall be deposited and from which all payments for Event expenses of any kind shall be disbursed.
- B. Establish and implement the following plans for the management and operation of the Event:
 1. Accounting and Cash Management Plan - describing procedures for year round and Annual Event management of accounting and cash matters.
 2. Risk Management Plan - describing provisions for adequate security and traffic control during each Annual Event's Days of Setup, Days of Event Operation, and Days of Removal. (NOTE: In the past, event security has been funded by the City and provided by the San Antonio Police Department, and will continue as long as funding is provided in the City's budget.)
 3. Food and Beverage Concession Booth Operator Selection Plan - describing the selection process and procedures including rules, restrictions, dates/times, booth fees, etc. (NOTE: Proposed plan may not include any requirement for fees for participating in the selection process.)
 4. Entertainment Selection Plan – describing criteria for selecting entertainment to be provided during the Days of Event Operation for each Annual Event that will include quality performances that are a credit to the City and contribute to the entertainment of the public.
 5. Cleaning and Waste Management Plan – describing arrangements, including a detailed schedule, for trash removal, grease collection/removal, and cleaning of the Market Square Area and public restrooms in adjacent City-owned facilities during and after each Day of Event Operation and during the Days of Removal.
- C. Be responsible for payment of all costs associated with the Event to include, but not be limited to: music licensing, insurance, set-up, event staff, portable toilets, clean-up, trash collection and disposal, fencing, licenses and permits, facility restoration, equipment rental, barricades, stages, lighting, booths, signage, generators, and others such as overtime for City staff required to assist with the Event (e.g. electricians to supervise wiring.) (NOTE: City will provide Selected LICENSEE with access to electricity and water at existing service connections within Market Square Area to extent of existing capacity.)
- D. Maintain and make available to City daily records of transactions, attendance and revenue data, and alcohol and sales tax data for each Annual Event.

- E. Manage the Event in such a way that full sales/revenue potential is realized.
- F. Provide adequate staffing for the administration and production of the Event to include a qualified event manager who will serve as the single point of contact for all vendors, attendees and the City.
- G. Comply with the City's Small Business Economic Development Advocacy Program requirements and the Good Faith Effort Plan adopted as a part of the Agreement.
- H. Procure and maintain all necessary licenses and permits (including TABC) required of the Licensee and assure that all vendors procure and maintain such licenses and permits, as necessary.
- I. Ensure all requirements of the Fiesta San Antonio Commission are met in order to continue operating the Event as a Commission sanctioned event.
- J. Advertise and promote the Event.
- K. Seek corporate sponsorships.
- L. Comply with all applicable laws and City code requirements.
- M. Provide the City with an Irrevocable Letter of Credit (ILOC) for each year of the Agreement to provide security for the LICENSEE's performance of its obligations under the Agreement. (NOTE: Such ILOC will be in the amount of \$50,000 for the first year of the Agreement and in the amount of \$75,000 for the subsequent years. The initial ILOC will be effective for a period of one year from issuance; subsequent ILOCs shall be due fifteen days prior to the expiration of the previous year's ILOC.)

Annual Requirements

- A. By February 15th of each year during the term of the Agreement:
 - 1. Submit Accounting and Cash Management Plan, Risk Management Plan, Food and Beverage Concession Booth Operator Selection Plan, Entertainment Selection Plan, Cleaning and Waste Management Plan to the City for approval.
 - 2. Submit a calendar detailing all of the activities and milestones for the accomplishment of the Annual Event to City for approval.
 - 3. Submit a layout, to City for approval, of the Area showing the planned placement of: booths, stages, event entrances, portable toilets, fixed equipment, trash bins, signage, sponsorship placement plan, sound equipment storage, etc. In addition, include information/maps/layouts regarding provisions for off-site parking storage, deliveries, etc. if any are planned. (NOTE: City no longer owns the parking lot located along Pecos-La Trinidad west of Gateway Plaza and cannot provide it for use during the Event.)
 - 4. Conduct a review of the SBEDA Good Faith Effort Plan with the City's SBEDA Office and provide evidence of good faith efforts to comply with the plan.

- B. On April 1st of each year during the term of the Agreement, submit to City a damage deposit in the amount of \$10,000.00.
- C. On May 3rd of each year during the term of the Agreement, pay to the City the agreed upon Minimum Dollar Amount to be established in Agreement.
- E. Operate the Annual Events according to the approved Accounting and Cash Management Plan, Risk Management Plan, Food and Beverage Concession Booth Operator Selection Plan, Entertainment Selection Plan, Cleaning and Waste Management Plan.
- F. Schedule, coordinate, and monitor entertainment.
- G. Participate in and assist with City street closure process.
- H. Provide for booth insurance through the Fiesta San Antonio Commission.
- I. Provide for sufficient off-site storage and staging areas, if necessary.
- J. Purchase or rent all operational supplies and services needed in the operation of the Event.
- K. Provide for, or cause to be provided, food, beverages (including alcoholic beverages), and other merchandise concessions which are of good quality, wholesome, and sanitary, such items, pricing, and serving size thereof to be commensurate with similar items sold at similar venues and in accordance with Fiesta San Antonio Commission standards, if any.
- L. Execute service agreements with vendors for all goods and services needed in the operation of the Event such as food, drinks, ice, dumpsters, fencing, portable toilets, and trash removal.
- M. Provide daily, formal communication (in the form of faxes or e-mails) regarding any problems, changes from approved plans/schedules/layouts, and/or any other important information to the City's Market Square Facilities Coordinator throughout the Days of Setup, Days of Event Operation and Days of Removal established in Sections 2.3, 2.4, and 2.5 of the Agreement.
- N. Immediately report problems with City-owned plumbing or electrical resources to City's on-site staff supervisor.
- O. Diligently monitor all booths to ensure that vendors operating booths are same vendors selected through the approved Food and Beverage Concession Booth Operator Selection Plan and immediately eject and dismiss any vendors found to be improperly vending. Selected LICENSEE will be responsible for ensuring that no booths are "sold" or "re-sold" outside of the approved Food and Beverage Concession Booth Operator Selection Plan process.
- P. Arrange for all utilities connections to existing electrical and water services (not to exceed existing services capacity) within the Market Square Area (including Gateway Plaza) required for the operation of the Event.
- Q. Provide for a minimum of 80 portable toilets, including four that comply with ADA accessibility standards.