

ORDINANCE

2021-06-17-0474

APPROVING AN EVENT MERCHANDISE SERVICES AGREEMENT WITH RIVER CITY MERCHANDISING, LLC TO PROVIDE STAFFING AND EQUIPMENT TO SELL EVENT-APPROVED MERCHANDISE AT THE ALAMODOME DURING EVENT DAYS FOR A ONE-YEAR TERM, WITH TWO ONE-YEAR RENEWAL OPTIONS, GENERATING APPROXIMATELY \$220,000.00 IN ANNUAL COMMISSIONS TO THE CITY AND \$30,000.00 IN ANNUAL SERVICE FEES TO RIVER CITY MERCHANDISING, LLC.

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WHEREAS, the Convention and Sports Facilities Department hosts a wide range of events at the Alamodome and is in need of a vendor to provide the staffing and equipment necessary to sell event-approved merchandise at the Alamodome during event days; and

WHEREAS, on February 24, 2020, a Request for Proposals (“RFP”) was released to solicit a vendor for event merchandise services and one firm responded to the RFP and was deemed eligible for review; and

WHEREAS, the Evaluation Committee reviewed the proposal on October 13, 2020 and recommends contracting with River City Merchandising, LLC; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the one-year Event Merchandise Services Agreement with River City Merchandising, LLC, with two one-year renewal options, are authorized and approved. The City Manager, or his designee, is authorized to execute the Agreement, a copy of which, previously executed by River City Merchandising, LLC, is attached to this Ordinance as **Exhibit I**.

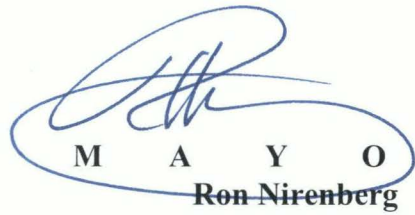
SECTION 2. Funds generated by this Ordinance will be deposited in Fund 29016000, Internal Order 245000000030, and General Ledger Account 4407709.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager’s designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

LB
06/17/21
Item No. 30

PASSED AND APPROVED this 17th day of June, 2021.

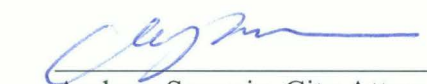

M A Y O R
Ron Nirenberg

ATTEST:



Tina J. Flores, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council

June 17, 2021

Item: 30

File Number: 21-3664

Enactment Number:

2021-06-17-0474

Ordinance approving an Event Merchandise Services Agreement with River City Merchandising, LLC, to provide staffing and equipment to sell event approved merchandise at the Alamodome during event days for a one-year term with two one-year renewal options. This a revenue agreement valued at approximately \$220,000.00 in annual commissions to the City and deposited into the Community and Visitor Facilities Fund and \$30,000.00 in service fees to River City Merchandising, LLC. [Alex Lopez, Assistant City Manager; Patricia M. Cantor, Executive Director, Convention and Sports Facilities]

Councilmember Ana E. Sandoval made a motion to approve. Councilmember John Courage seconded the motion. The motion passed by the following vote:

Aye: 10 Nirenberg, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo,
Cabello Havrda, Sandoval, Pelaez, Courage and Perry

Abstain: 1 Bravo

LB
06/17/21
Item No. 30

EXHIBIT I

**PROFESSIONAL SERVICES AGREEMENT
FOR
MERCHANDISING SERVICES**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”), acting by and through its City Manager and River City Merchandising, LLC (“Contractor”), by and through its authorized representative, both of which may be referred to collectively as the “Parties.”

WHEREAS, City conducted a formal Request for Proposals for Merchandising Services for the Alamodome (“RFP”) that closed on March 24, 2020, and Contractor was the sole responsive proposer; and

WHEREAS, the evaluation panel reviewed Contractor’s proposal, which is attached and incorporated into this Agreement and Exhibit I, and recommended the Agreement be awarded to Contractor; and

The Parties agree, and by the execution of this Agreement are bound, to the mutual obligations contained and to the performance and accomplishment of the tasks described below.

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 “Contractor” 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.

1.4 “Department” shall mean the City’s Convention and Sports Facilities Department.

II. TERM

2.1 The term of this Agreement shall begin July 1, 2021 and terminate June 30, 2022, unless terminated sooner under the provisions of this Agreement (“Term”).

2.2 This Agreement may be extended for up to two one-year renewal periods, subject to the mutual written agreement of the Parties. City Council approval shall not be required to exercise such renewals.

III. SCOPE OF SERVICES

3.1 Contractor shall provide event-approved merchandise sales services on behalf of the various licensees hosting events at the Alamodome, as set forth in this Agreement and in Contractor's Proposal submitted in response the RFP, which is attached and incorporated into this Agreement as Exhibit I.

3.2 It is the understanding of the parties that the Alamodome hosts approximately 118 events annually and City enters into license agreements with various licensees to host these events. In consideration for such events, the Alamodome may be responsible for staffing and equipment to sell event-approved merchandise which directly relates to the event. Alamodome staff will keep Contractor informed of all scheduled events requiring event merchandise services "Event(s)"). Contractor will either provide full merchandising services for such Events by providing staffing and equipment to sell licensee's merchandise at the Alamodome ("Full Merchandise Services") or will provide in/out inventory count services for such Events ("In/Out Inventory Count"), as directed by City. In/Out Inventory Count occurs when a licensee provides its own staff to sell merchandise. In such instances, City will use Contractor to conduct the inventory in/out count and to count merchandise revenue. This Agreement does not guarantee any amount of sales or business for Contractor. The historical data provided as part of the RFP was for informational purposes only. City makes no representations regarding future merchandise sales.

3.3 Prior to each Event, a representative of Contractor will be required to meet with the licensee representative and Alamodome staff to agree upon stand locations, check-in time, merchandise items, secured storage, secure counting area, etc. as needed, and will not bill these hours to City. Contractor is only allowed to sell such agreed-upon merchandise. During event days, Contractor will be expected to have stands open and ready by the time doors open and will only break down after doors close for every Event.

3.4 Staffing.

3.4.1 Contractor must provide friendly, professional Event merchandise staff during Event hours. Contractor's staff shall at all times be polite and courteous in their dealings with the patrons and staff of the Alamodome and at all times treat employees and patrons of the Alamodome with the utmost courtesy and respect. Contractor's personnel must follow all City and Alamodome rules. The Alamodome Event Services Manager or his designee reserves the right to have any offending person removed from the premises because of improper behavior or failure to follow applicable City or Alamodome rules. The Alamodome Event Services Manager shall be the sole judge of whether behavior is improper or violates Alamodome or City rules.

3.4.2 Contractor's Event Merchandise staff must wear a uniform approved by City. The uniform must reflect a professional image. Contractor shall ensure that all of its employees present themselves in a clean and professional manner at all times while on the Alamodome premises.

3.4.3 Contractor's personnel shall meet high standards of demeanor and appearance.

- 3.4.4 Contractor should at all times be aware that it is a representative of City and all Contractor's employees, representatives and contractors shall conduct themselves in a way that is respectful and representative of City's values to clients, Alamodome staff, and fans.
- 3.4.5 The number of Event Merchandise staffing services required for each Event will be determined based upon the projected attendance numbers, duration and type of Event as well as any other special considerations associated with the Event, such as the history of tours, etc. Contractor must determine, based on attendance figures, acceptable staffing levels to provide customers with a quality experience for purchasing the merchandise. The Alamodome Event Services Manager, or designee, will determine the placement of stands.
- 3.4.6 Contractor is required to conduct, maintain and document criminal background checks on all full and part-time staff, or temporary staff prior to Events at the Alamodome. Contractor will share all criminal background check findings with City and City, at its discretion, may require that an individual be replaced and not allowed to work at the Alamodome under this Agreement.
- 3.4.7 Contractor shall provide all necessary training to its employees on a continuous basis, including but not limited to, cash handling and customer service.

3.5 Equipment. City will provide all tables, chairs, and electrical for all stands. Contractor will provide, at a minimum, the following equipment:

- 3.5.1 Display materials for a minimum of 16 stands:
- Grid wall or something similar
 - Body forms
 - Hooks and clips
 - Price Signs
 - Lighting
 - Table Skirting
- 3.5.2 Credit Card machines: Contractor must also be able to facilitate cash purchases and have change on hand for cash transactions
- 3.5.3 Carts, including electric carts (may be rented for the larger events)

3.6 Inventory. Contractor will be in charge of controlling and monitoring inventory, including keeping adequate software to monitor any items sold and gross sales, as well as the return of any unsold inventory.

3.7 Reporting and Payment.

- 3.7.1 City shall have agreements with licensees for Events requiring Contractor's services. Such agreements will determine the portion of

merchandise revenue due to City from each Event ("City Revenues"). Contractor shall retain all City Revenues and shall subtract and retain Contractor's payment ("Contractor's Payment"), as set forth in Section 4.1, from such City Revenues, the remainder of which shall be remitted to City as set forth in Subsection 3.7.3 ("City's Payment") and 3.7.4.

3.7.2 Contractor will be required to retain and report sales tax for Events and will submit preliminary on-site gross sales for each Event three (3) business days following each Event.

3.7.3 For Full Merchandise Services, Contractor shall pay each Event licensee the amount of merchandise sales revenue due on or before the date agreed upon during the pre-event meetings. Contractor shall pay City's Payment to City on a monthly basis no later than the fifteenth (15th) calendar day of the month following the preceding month's Event. City's Payment shall be based on net sales after taxes, bootleg security, equipment rental fee, and credit card fees have been paid. Any shortages incurred during Events will be the sole responsibility of Contractor. Complete backup should be sent each month promptly with payment and should include the following items:

- Inventory log
- Analysis of items per price points
- Merchandise report
- Gross sales figures
- Sales tax paid
- Credit Card Fees
- Bootleg Security Fees
- Relevant equipment deductions
- Payments made to licensees

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3.7.4 For in and out inventory count services, Contractor shall collect from Event licensee on or before the date agreed upon during the pre-vent meetings. Contractor shall pay City's Payment to City on a monthly basis no later than the fifteenth (15th) calendar day of the month following the preceding month's Event.

3.8 Contractor will provide City all necessary paperwork in order for it to be registered as a City vendor. Additionally, Contractor will handle all payroll needs and complete all State and Federal forms necessary to conform to City requirements.

3.9 All work performed by Contractor shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties. City shall be under no obligation to pay for any work performed by Contractor, 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 Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate and may require repayment from Contractor for any unsatisfactory work should City elect not to terminate.

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, for all services and activities set forth in this Agreement, For Events where Contractor provides Full Merchandise Services, Contractor shall retain Contractor's Payment in the amount of 8% of City Revenues for each Event, in the manner set forth in Subsection 3.7.1. For Events where Contractor provides In/Out Inventory Count, Contractor shall retain Contractor's Payment in the amount of 3% of City Revenues for each Event, in the manner set forth in Subsection 3.7.1. As stated in Section 3.2, City makes no guarantees as to the number of Events to be held during the Term or the amount of Contractor's Payments throughout the Term.

4.2 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The Parties agree that all compensable expenses of Contractor have been provided for in the payment to Contractor as specified in section 4.1 above.

4.3 City shall not be obligated or liable under this Agreement to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS AND CONFIDENTIALITY

5.1 Any and all writings, documents or information in whatsoever form and character produced by Contractor 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 Contractor.

5.2 Contractor 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.

5.3 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by Contractor under this Agreement shall be disclosed or made available to any individual or organization by Contractor without the express prior written approval of City. In the event Contractor receives any such request, Contractor shall forward such request to City immediately.

5.4 Contractor shall establish a method to secure the confidentiality of records and information that Contractor may have access to in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting City's right of access to records or other information under this Agreement.

5.5 In accordance with Texas law, Contractor acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Contractor pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Contractor.

5.6 The term "local government record" as used in this document means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

5.7 Contractor acknowledges and agrees that all local government records, as described in this document, produced in the course of the work required by this Agreement will belong to and be the property of City. Contractor will be required to turn over to City, all such records as required in this Agreement. Contractor 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.

5.8 Contractor agrees to comply with all applicable federal, state, and local laws, rules, and regulations governing documents and ownership, access and retention.

VI. RECORDS RETENTION

6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered under this Agreement ("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, and the record retention period set forth below, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Contractor shall retain any and all documents produced as a result of services provided under this Agreement for a period of four (4) years ("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 under this Agreement, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor 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 Contractor to return said documents to City prior to or at the conclusion of said retention period at Contractor's expense.

6.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the work performed under this Agreement and any related documentation and records. Contractor understands and agrees that City will process and handle all such requests.

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 Without Cause. This Agreement may be terminated by the City upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 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 (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;

7.3.2 Violation by Contractor of any law, rule, or regulation to which Contractor is bound or shall be bound under the terms of this Agreement; or

7.3.3 Bankruptcy or selling substantially all of Contractor's assets.

7.4 Defaults With Opportunity for Cure. Should Contractor 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. Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new Contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failing to perform or failing to comply with any covenant or provision required under this Agreement; or

7.4.2 Performing unsatisfactorily.

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

7.6 Regardless of how this Agreement is terminated, Contractor 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 Contractor, or provided to Contractor, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor 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 Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

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

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

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 Contractor for any default 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) calendar 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:

Convention and Sports Facilities Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

If intended for Contractor, to:

President. Wallace Harding
River City Merchandising, LLC
8801 Lockway
San Antonio TX 78217

IX. [Reserved]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the **CONVENTION AND SPORTS FACILITIES DEPARTMENT**, which shall be clearly labeled **"EVENT MERCHANDISE SERVICES FOR ALAMODOME"** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the

insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the **CONVENTION AND SPORTS FACILITIES DEPARTMENT**. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement, and any extension or renewal, 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.

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

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
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 Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.

10.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor and provide a certificate of insurance and endorsement that names Contractor and City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval,

when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this contract. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the Agreement for all purposes.

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

City of San Antonio
Attn: CONVENTION AND SPORTS FACILITIES
P.O. Box 839966
San Antonio, Texas 78283-3966

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

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

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

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

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

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

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

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

XI. INDEMNIFICATION

11.1 CONTACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, property damage and intellectual property right infringement, made upon CITY directly or indirectly arising out of, resulting from or related to CONTACTOR'S activities under this Agreement, including any acts or omissions of CONTACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTACTOR, 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 CONTACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. In addition, CONTACTOR agrees to FULLY INDEMNIFY, DEFEND, and hold CITY harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

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

11.3 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONTACTOR in fulfilling its obligation to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONTACTOR 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 Contract. If CONTACTOR fails to retain counsel within

such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONTACTOR 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.

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

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Contractor 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 Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.2 The use of any subcontractor(s) requires the prior written approval of Director.

12.3 Any work or services approved for subcontracting 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 Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees.

12.4 Except as otherwise stated in this Agreement, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any of its duties, by transfer, by subcontracting or any other means, without the prior written consent of Director. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor contractor, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor 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 Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

13.1 Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed and all persons performing same,

and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing contained in this Agreement shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. 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 Contractor under this Agreement and that Contractor has no authority to bind City.

XIV. CONFLICT OF INTEREST

14.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

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

14.2 Contractor warrants and certifies as follows:

- (i) Contractor and its officers, employees and agents are neither officers nor employees of City.
- (ii) Contractor has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

14.3 Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

XV. AMENDMENTS

15.1 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 Contractor and subject to City Council approval, when required.

XVI. SEVERABILITY

16.1 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 and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained in this Agreement; 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.

XVII. LICENSES/CERTIFICATIONS

17.1 Contractor warrants and certifies that Contractor and any other person designated to provide services 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 under this Agreement.

XVIII. COMPLIANCE

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

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

18.3 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company,

including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

By submitting an offer to or executing contract documents with City, Contractor verifies that it does not boycott Israel, and will not boycott Israel during the term of the Agreement. City hereby relies on Contractor's verification. If found to be false, City may terminate the Agreement for material breach.

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 of this Agreement. 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 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, when required. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party under this Agreement or by law or in equity.

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 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 Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations contained in this Agreement.

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. PRIORITY OF INTERPRETATION

24.1 This Agreement shall be interpreted in the following descending priority of importance:

- (i) This Agreement
- (ii) Exhibit I

Any conflicts between this Agreement and Exhibit I shall be resolved in favor of this Agreement.

XXV. ENTIRE AGREEMENT

25.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, 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 effective date, and duly executed by the Parties, in accordance with Article XV. Amendments.

EXECUTED and **AGREED** to by the Parties as indicated below.

CITY OF SAN ANTONIO

Erik Walsh
City Manager
Date: _____

**RIVER CITY MERCHANDISING,
LLC**

Wallace Harding
President

Date: 3/22/21

Approved as to Form:

City Attorney

Exhibit I: Contractor's Proposal

EXHIBIT I: CONTRACTOR'S PROPOSAL