

**PROFESSIONAL SERVICES AGREEMENT FOR  
MARKETING AND CONSULTING SERVICES FOR THE CONVENTION  
AND SPORTS FACILITIES DEPARTMENT**

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, or designee, and Venue Coalition, Inc. ("Consultant"), by and through its authorized representative, both of which may be referred to collectively as the "Parties."

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

**I. DEFINITIONS**

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

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Consultant" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the Executive Director of City's Convention and Sports Facilities Department.

"Assist" shall be defined when Consultant helps to secure an event for City or affiliated facility at City's reasonable discretion, whether the event is single or multi-year rental. Assists may be the result of new business opportunities brought to the City by Consultant, bookings at the request of or in collaboration with City, or solicitations by Consultant on behalf of the City to a producer, agent or manager.

"Fees" In consideration of the services, City agrees to pay Consultant an annual membership base fee ("Membership Base Fee") and an eligible Assist fee ("Assist Fee"), defined below, with all collectively referred to as Fees.

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon the date of signature of the last Party to sign ("Effective Date") and shall continue in full force and effect for a period of thirty-six (36) months thereafter, unless terminated sooner under the terms of this Agreement.



2.2 Subject to the mutual agreement of both Parties, the Agreement may be extended for up to two additional one-year renewal options, subject to the execution of written renewal agreements. Such renewal agreements shall not require future City Council authorization.

2.3 Under this Agreement, an agreement "year" shall mean the period beginning on the Effective Date and ending on the day immediately preceding the first anniversary of the Effective Date, and each successive 12-month period thereafter during the Term ("Agreement Year").

### **III. SCOPE OF SERVICES**

3.1 Consultant shall assist City in booking events for the Alamodome and the Lila Cockrell Theatre by providing the following services, as described in better detail in Consultant's Proposal, which is incorporated into this Agreement as if set forth in full ("Project"). Any conflicts between Consultant's Proposal and this Agreement shall be resolved in favor of this Agreement. Specifically, Consultant shall provide:

- 3.1.1 National booking representation and Advocacy for event bookings;
- 3.1.2 Access to a staff of industry booking specialists with a high level of industry experience and established relationships;
- 3.1.3 Access to network covering a large number of arenas, stadiums, theatres, and convention centers;
- 3.1.4 Ongoing outreach to promoters, agents, and decision makers on behalf City;
- 3.1.5 Event rental and co-promote opportunities;
- 3.1.6 Buying opportunities, if City desires to buy shows;
- 3.1.7 Introductions and strategic partnerships with promoters and content providers;
- 3.1.8 Ongoing communication to discuss current touring intelligence and industry trends;
- 3.1.9 Shared industry best practices, surveys, and relevant operational intelligence;
- 3.1.10 Meetings and social events at industry conferences;
- 3.1.11 Targeted national marketing campaigns to industry professionals;
- 3.1.12 Access to national and regional venue groups with exclusive calls and curriculum;



- 3.1.13 Provide City representatives with exclusive opportunities, including activities, trainings, or similar, at appropriate conferences (IEBA, Pollstar, EVMC, Venue Connect, IAVM, and/or similar)
- 3.1.14 Reporting – Provide quarterly reporting on potential concert and event leads and booked events for each venue to City designee in the format requested

3.2 All work performed by Consultant shall be performed to the reasonable 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 Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, even should City elect not to terminate.

#### **IV. COMPENSATION TO CONSULTANT**

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director. All services and activities set forth in this Agreement, City agrees to pay Consultant the amounts set forth in the Payment Schedule, which is attached and incorporated into this Agreement as Exhibit I.

4.1.1 In the event that Consultant does not book a show with a capacity of more than 15,000 per event at the Alamodome and does not book any show at the Lila Cockrell Theatre (no capacity limit), the Membership Base Fee set forth in Exhibit I will be the only payment due to Consultant for that Agreement Year.

4.2 The beginning of each Contract Year, Consultant shall invoice City the Membership Base Fee amount for that Agreement Year set forth in Exhibit I. This annual invoice shall be paid by City no later than June 1 of each Agreement Year, subject to the provisions of Sections 3.2 and 4.1. In the event an Assist by Consultant results in a single or multi-day rental either at the Alamodome or Lila Cockrell Theatre, City shall pay an Assist Fee for the first event day, and each subsequent event day, regardless of the number of performances in each day. The maximum amount City will pay per year for an Assist Fee, for both the Alamodome and Lila Cockrell Theatre combined, will be \$50,000, as set forth in Exhibit I. Consultant shall invoice City the Assist Fees amount and this invoice shall be paid to Consultant 30 days after the conclusion of the event, as set forth in Exhibit I. The calculation of Assist Fees for each facility is as follows:

1 Alamodome

- \$0 USD, for shows with a paid capacity of less than 15,000.
- \$1 USD per paid ticket, for shows with a paid capacity of 15,000 or more.

2. Lila Cockrell Theatre

- \$1 USD per paid ticket (no limit in capacity)



4.2.1 All Assist Fees are considered confidential information. However, they are subject to the provisions of the Texas Public Information Act. These internal charges to City will not appear on any promoter, producer, or talent settlements.

4.2.2 All events booked and/or secured by the Consultant during the contract term will be paid pursuant to this agreement. If Consultant is the procuring cause of an event booked/secured in either the Alamodome or Lila Cockrell Theatre and the event date takes place after this Agreement has expired or has been terminated, Consultant shall be entitled to be paid the Assist fees, as per Exhibit I – Payment Schedule.

4.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The Parties agree that all compensable expenses of Consultant have been provided for in the payments to Consultant as specified in Section 4.1 and Exhibit I, including all travel, lodging and per diem costs. Total payments to Consultant cannot exceed such amounts, without prior approval and agreement of all Parties.

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

## **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents, and information, City has the right to use all such writings, documents and information as City desires, without restriction.

5.3 Confidentiality and Trade Secrets ("Trade Secrets"). The information pertaining to the business of Consultant, City and all other venue members of Consultant's coalition ("Coalition"), including but not limited to information regarding the provisions of this Agreement, Fees, deal terms with Talent, or the business affairs of the other venue members of Coalition, which: (i) is not generally known to the public or other venues who are not members of Coalition; (ii) confers economic benefit to City, Consultant and Coalition because the information is not publicly known; and (iii) there is the need to make an effort to maintain its secrecy. The Trade Secrets may be comprised of or include confidential information ("Confidential Information"). Examples include call agendas, ticket counts, and Talent Offer sheets. City affirmatively agrees not to disseminate, by any means whatsoever, such Confidential Information to anyone other than to Consultant. However, nothing herein shall preclude or limit Consultant from disseminating or providing the Confidential Information to agents, promoters, or others, in an effort to solicit business for City and members of Coalition. This includes



disseminating such Confidential Information to any venue which is considering becoming a member venue of Coalition.

City shall not share, disseminate or distribute any materials provided or developed by Consultant to anyone without Consultant's prior knowledge and approval, unless required by law, including the Texas Public Information Act. By example, talent offer sheets, call agendas, ticket counts and/or email communications with or without Consultant's logo shall not be shared or distributed with any party without the prior written approval of Consultant, unless required by law as noted above. Consultant shall have no liability whatsoever to City with regard to any materials used or shared by City to a member venue of Coalition or any other party whatsoever, without Consultant's prior knowledge and approval.

In furtherance of Consultant's providing of Services as mentioned herein, City may participate in telephonic conference or "dial in" calls. City agrees not to record the calls in any format whatsoever without the written consent of Consultant, and further acknowledges such calls may contain Confidential Information as described herein.

If City opts-in to participate in sharing ticket count box office information by providing information to Consultant, Consultant shall have no liability whatsoever for any claims made against City related to the sharing of this data, which may include data and/or information breach, sharing of information with third-parties, or any other unwanted use of the data.

In addition to the Services provided by Consultant to City, City acknowledges that: (i) Consultant provides industry expertise, advice and general consulting to City; and (ii) any information or advice shared by Consultant to City about City or other venues, regardless if the other venues are members of Coalition is strictly confidential and intended only to assist and help City compete within the live events industry; and (iii) decisions that are made based on the information and/or advice provided by Consultant to City, are made by City on its own; and (iv) Consultant shall not be liable to City for any damages whatsoever related to such information or advice, unless such information or advice involves intentional misrepresentations or negligence."

## **VI. RECORDS RETENTION**

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered under this Agreement ("documents"), and shall make such materials available to the City at their respective offices, at all reasonable times, as deemed necessary, and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established in this Agreement, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided 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, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents, as deemed necessary by City, during said



retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Each party shall notify the other party, immediately, in the event either party receives any requests for information from a third party, which pertain to the documentation and records referenced in this Agreement. Consultant understands and agrees that City will process and handle all such requests in a manner consistent with applicable laws regarding public records in the state of Texas and will make best efforts to keep relevant information confidential.

## **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 of this Agreement.

7.2 Termination Without Cause. This Agreement may be terminated by either Party upon 15 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.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 15 days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such 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 consultant 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 consultant against Consultant'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 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant required by this Agreement

7.4.3 Performing reasonably unsatisfactorily, consistent with Section 3.2.

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

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

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

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default 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 upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to:

City of San Antonio  
Attn:  
Convention and Sports Facilities Department  
100 E. Market  
San Antonio, Texas 78205

If intended for Consultant, to:

Venue Coalition, Inc.  
2435 Ventura Blvd., Suite C  
Camarillo, CA 93010



## IX. [Reserved]

## X. INSURANCE

10.1 No later than 30 days before the scheduled service under this Agreement begins, Consultant must provide a completed Certificate(s) of Insurance to City's Convention and Sports Facilities Department. The certificate must be:

- clearly labeled with the legal name of the Agreement in the Description of Operations block;
- completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (City will not accept Memorandum of Insurance or Binders as proof of insurance);
- properly endorsed and have the agent's signature, and phone number

10.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Convention and Sports Facilities Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

10.3 If City does not receive copies of insurance endorsement, then by executing this Agreement, Consultant certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Agreement.

10.4 City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

10.5 Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If Consultant claims to be self-insured, they must provide a copy of their declaration page so City can review their deductibles:

<i><b>INSURANCE TYPE</b></i>	<i><b>LIMITS</b></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. Independent Contractors*	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella Liability Coverage must be on a per project aggregate.



4. Professional Liability	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
5. 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.
*If Applicable	

10.6 Consultant must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Consultant and provide a certificate of insurance and endorsement that names Consultant and City as additional insureds. Consultant shall provide City with subcontractor certificates and endorsements the subcontractor starts work.

10.7 If a loss results in litigation, then City is entitled, upon request and without expense to City, to receive copies of the policies, declaration page and all endorsements. Consultant must comply with such requests within 10 days by submitting the requested insurance documents to City at the following address:

City of San Antonio  
Convention and Sports Facilities Department  
P.O. Box 839966  
San Antonio, TX 78283-3966

10.8 Consultant's insurance policies must contain or be endorsed to contain the following provisions:

- Name City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy. City's insurance is not applicable in the event of a claim.
- Contractor shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of City; and
- Provide 30 days advance written notice directly to City of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

10.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and



applicable endorsements to City. City shall have the option to suspend Consultant'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.

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

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

10.12 Consultant'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.

10.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

10.14 Consultant and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

## **XI. INDEMNIFICATION**

11.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, 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 CONSULTANT 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. In addition, CONSULTANT agrees to FULLY INDEMNIFY, DEFEND and HOLD CITY HARMLESS from any claim involving patent infringement, trademarks, trade secrets, and copyrights on services or 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. Consultant shall advise City in writing within 24 hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Consultant's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Consultant of any of its obligations under this paragraph.

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

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

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees of Consultant.

12.2 It is City's understanding, and this Agreement is made in reliance thereon, that Consultant intends to perform all the work under this Agreement. The use of any subcontractors shall require the prior approval of City.

12.3 Any work or services approved for subcontracting under this Agreement shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by City.

12.4 Except as otherwise stated in this Agreement, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties under this Agreement, by transfer, by subcontracting or any other means, without the consent of City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted,



Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

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 Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

### **XIII. INDEPENDENT CONTRACTOR**

13.1 Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed under this Agreement 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 Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The Parties understand and agree that 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 Consultant under this Agreement and that Consultant has no authority to bind City.

- 13.2 City further acknowledges that all aspects of event execution, including, but not limited to event execution, event management, marketing and production management shall be the sole responsibility of City for all events booked by Consultant.

### **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 Consultant warrants and certifies as follows:

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

14.3 Consultant 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 Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance, 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 hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained; 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 Consultant warrants and certifies that Consultant and any other person designated to provide services under this Agreement 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 Consultant 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, Consultant 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 executing this Agreement with City, Consultant verifies that it does not boycott Israel, and will not boycott Israel during the term of this Agreement. City relies on Consultant's verification. If found to be false, City may terminate this 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 contained in 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, as described in Article XV. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party 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 CREATED UNDER THIS AGREEMENT ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

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

## **XXI. LEGAL AUTHORITY**

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

24.1 This Agreement and its Exhibit 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.

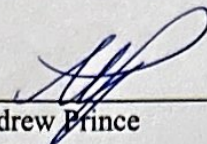
**EXECUTED and AGREED** to be effective \_\_\_\_\_.



**CITY OF SAN ANTONIO**

**VENUE COALITION, INC.**

\_\_\_\_\_  
Erik Walsh  
City Manager

  
\_\_\_\_\_  
Andrew Prince  
President

Approved as to Form:

\_\_\_\_\_  
City Attorney

Exhibit I: Payment Schedule



## Exhibit I

### Payment Schedule

Agreement Year	Total Cost (Per Agreement Year)
Agreement Year 1	<p>\$60,000 Membership Base Fee + \$1/paid ticket for all confirmed shows with paid attendance totaling 15,000 or more for the Alamodome and \$1/paid ticket at the Lila Cockrell Theatre (no capacity requirement) per event day for which Consultant provided an Assist ("Assist Fee") (Total Assist Fee for Agreement Year 1 capped at \$50,000)</p> <p style="text-align: right;"><b>\$110,000.00 Maximum</b></p>
Agreement Year 2	<p>\$62,500 Membership Base Fee + \$1/paid ticket for all confirmed shows with with paid attendance totaling 15,000 or more for the Alamodome and \$1/paid ticket at the Lila Cockrell Theatre (no capacity requirement) per event day for which Consultant provided an Assist ("Assist Fee") (Total Assist Fee for Agreement Year 2 capped at \$50,000)</p> <p style="text-align: right;"><b>\$112,500.00 Maximum</b></p>
Agreement Year 3	<p>\$65,000 Membership Base Fee + \$1/paid ticket for all confirmed shows with paid attendance totaling ,15,000 or more for the Alamodome and \$1/paid ticket at the Lila Cockrell Theatre (no capacity requirement) per event day for which Consultant provided an Assist ("Assist Fee") (Total Assist Fee for Agreement Year 3 capped at \$50,000)</p> <p style="text-align: right;"><b>\$115,000.00 Maximum</b></p>
Renewal 1-Agreement Year 4	<p>\$67,500 Membership Base Fee + \$1/paid ticket for all confirmed shows with paid attendance totaling 15,000 or more for the Alamodome and \$1/paid ticket at the Lila Cockrell Theatre (no capacity requirement) per event day for which Consultant provided an Assist ("Assist Fee") (Total Assist Fee for Agreement Year 4 capped at \$50,000)</p> <p style="text-align: right;"><b>\$117,500.00 Maximum</b></p>
Renewal 2-Agreement Year 5	<p>\$70,000 Membership Base Fee + \$1/paid ticket for all confirmed shows with paid attendance totaling ,15,000 or more for the Alamodome and \$1/ paid ticket at the Lila Cockrell Theatre (no capacity requirement) per event day for which Consultant provided an Assist ("Assist Fee") (Total Assist Fee for Agreement Year 5 capped at \$50,000)</p> <p style="text-align: right;"><b>\$120,000.00 Maximum</b></p>