LB
09/6/12
Item No. 16

AN ORDINANCE 2012-09-06-0676

AUTHORIZING A REVISED AND RESTATED LICENSE AGREEMENT WITH THE UNIVERSITY OF TEXAS AT SAN ANTONIO TO HOST ITS FOOTBALL GAMES AT THE ALAMODOME THROUGH 2035.

* * * * *

WHEREAS, the City, the University of Texas at San Antonio ("UTSA"), and the Alamodome enjoyed a successful inaugural 2011 football season and as a result have been in discussions to extend the current license agreement; and

WHEREAS, the Revised and Restated License Agreement ("Agreement") extends the term through 2035, provides that the Alamodome will be maintained according to NCAA standards subject to budgetary appropriations, discontinues the City's receipt of $1.00 per ticket on incremental ticket sales in excess of 20,000 per game, allows UTSA to sell 50 Alamodome suites and retain the revenues, and provides UTSA the option to purchase Alamodome parking for resale; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the Revised and Restated License Agreement with UTSA are authorized and approved.

SECTION 2. The City Manager or her designee is authorized to execute the Agreement. A copy of the Agreement, previously executed by UTSA, is attached to this Ordinance as **Exhibit I.**

SECTION 3. Funds generated by this Ordinance from all concessions and catering commissions, including beer sales commissions, will be deposited into Fund 29016000, Internal Order 245000000030 and General Ledger 4407731 for Concessions and General Ledger 4407732 for Catering.

SECTION 4. Funds generated by this Ordinance from parking will be deposited into Fund 29016000, Internal Order 245000000030 and General Ledger 4403110.

SECTION 5. Funds generated by this Ordinance for facility access fees will be deposited into Fund 29016000, Internal Order 245000000030 and General Ledger 4407222.

SECTION 6. Funds generated by this Ordinance from renewal and improvement fees will be deposited into Fund 29016000, Internal Order 245000000030 and General Ledger 4407223.

SECTION 7. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance 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 8. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

PASSED AND APPROVED this 6th day of September, 2012.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Michael D. Bernard, City Attorney

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 16

Name:	16
Date:	09/06/2012
Time:	10:19:21 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a Revised and Restated Alamodome License Agreement with The University of Texas at San Antonio (UTSA) to host its football games at the Alamodome through 2035. [Pat DiGiovanni, Deputy City Manager; Michael J. Sawaya, Director, Convention, Sports, and Entertainment Facilities]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2	x					
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4	x					
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				x
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Exhibit I

REVISED AND RESTATED
ALAMODOME LICENSE AGREEMENT
UTSA INTERCOLLEGIATE FOOTBALL GAMES

THIS REVISED AND RESTATED AGREEMENT, dated this ____ day of _____, 2012 ("Effective Date"), by and between City of San Antonio, Texas, a municipal corporation of the State of Texas, acting by and through its Assistant Director of Convention, Sports, and Entertainment Facilities, or his/her designee and the Board of Regents of The University of Texas System for the use and benefit of The University of Texas at San Antonio (UTSA), an agency and institution of higher education of the State of Texas, is established to set forth the agreements, covenants and provisions set forth herein.

WITNESSETH:

Recitals

WHEREAS, the City is the owner and operator of the Alamodome Stadium in San Antonio, Texas, and,

WHEREAS, Licensee and City desire to enter into an agreement specifying the terms and conditions under which Licensee will use the Alamodome for presentation of the UTSA Intercollegiate Football Games and completion of all related activities during the term of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

ARTICLE ONE

Definitions

All words in this Agreement bearing initial capitals, other than proper nouns, section headings, or words required to be capitalized for proper usage, are defined terms and shall have the meanings specifically assigned to them in this article.

As used in this Agreement, the following terms and words are hereby defined as follows:

1.1 Agreement means this Revised and Restated Alamodome License Agreement for UTSA Intercollegiate Football Games and related activities.

1.2 Alamodome means the multi-purpose domed stadium, located in San Antonio, Texas, providing approximately 160,000 square feet of gross floor space,

seating for approximately 65,000 people, and the northeast, southeast and south parking lots, operated by the City and situated at 100 Montana Street

1.3 Alamodome Video Wall System and Scoreboard means the electronic color video display screens, scoreboards, and message boards located in the interior of the Alamodome.

1.4 Assistant Director of Convention, Sports, and Entertainment Facilities means the Assistant Director of the Convention, Sports, and Entertainment Facilities or his/her designee.

1.5 Athletic Organization Rules means the constitution, bylaws, rules, policies and procedures of the NCAA, the Western Athletic Conference, and any other athletic organization with jurisdiction over Licensee.

1.6 Building License Payment shall mean the rental cost to Licensee for the use of the Alamodome for the Event.

1.7 Catered Event shall mean any event, assembly, function or similar gathering for which Licensee requests the City's licensed caterer ("Caterer") to provide Catering Services.

1.8 Catering Services shall mean the service of food and/or beverage (but excluding service in the club and bar area in the Alamodome North End, currently called the Skyline Club, concession services and restaurant operation) in the Alamodome and at outside areas on the Alamodome premises as first approved by the City in writing, where the selection, quantity, quality, location and/or presentation of food and beverage items to be offered for sale or service is determined by the Licensee.

1.9 City means The City of San Antonio, Texas, a municipal corporation of the State of Texas.

1.10 Communication System/Services means audio, video and cablecast, and voice and data systems and other miscellaneous communication equipment on the Alamodome property. The term "communication system" does not include the public address system or the sound system in the Alamodome, or the sideline communication system used by Licensee's and visiting team's football coaches, staff, and team members to communicate to one another during games.

1.11 Concessions shall mean the sale of food, beverages and souvenir or novelty items through concession points of sale, either fixed or portable, or through vendors "hawking" products to event attendees where the attendee pays the food or beverage server at the time of sale, unless such sales are from cash bars where Catering Services are provided. The term "Concessions" does not include the sale of Licensee's novelty items as described in Section 9.2.

1.12 Egress means the exit from the stadium of people attending the Event or moving out of an Event.

1.13 Event(s) means the UTSA home intercollegiate football games, practices and walk-throughs occurring up to twenty-four (24) hours prior to such games, public practices, and all related activities during the term of this Agreement.

1.14 Event Days has the meaning ascribed to it in Section 3.3.

1.15 Event Settlement Statement means a statement, to be transmitted by the City to the Licensee, setting forth the total License fee and additional services cost to be paid by the Licensee to the City under the terms of this agreement.

1.16 Facility Access Fee means a fee payable by Licensee to City equal to the number of Event tickets sold for each Event (not including complimentary tickets and Student Tickets) multiplied by fifty cents ($0.50) or the then-current fee, in accordance with authority granted by City Council Ordinance No. 78728 adopted on September 15, 1993, for so long as such Ordinance, and any amendments thereto, remain in effect.

1.17 Ingress means the entry of people having tickets or other valid authorization for entry into the stadium to attend the event, or the moving in of an event.

1.18 Licensee means The University of Texas at San Antonio (UTSA).

1.19 NCAA means the National Collegiate Athletic Association

1.20 NCAA Facility means a football stadium (i) in compliance with all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances and orders (ii) of the standard quality that prevails among stadiums utilized by members of the intercollegiate football Bowl Championship Series or its successor; (iii) fully prepared to host the highest rank of NCAA intercollegiate football (currently Football Bowl Subdivision); and (iv) in compliance with Athletic Organization Rules.

1.21 Renewal and Improvement Fee means a fee payable to City equal to the number of Event tickets sold for each Event (not including complimentary tickets and Student Tickets) multiplied by fifty cents ($0.50) of the then-current fee, in accordance with authority granted by City Council Ordinance No. 99744, adopted on September 16, 2004, for so long as such Ordinance, and any amendments thereto, remain in effect.

1.22 Required Services. Staffing services and other services that are reasonably required for operation of the Alamodome for each Event as more particularly described in Section 2.3(b).

1.23 Scope of Event means the general activities and timelines required to complete each Event.

1.24 Student Tickets means those tickets provided to LICENSEE's enrolled students on the basis of the student's payment to LICENSEE of an athletic student service fee at the time of the student's enrollment. The payment by Licensee's enrolled students of such student service fee entitles those students to tickets for Licensee's intercollegiate athletic events.

1.25 Suites shall mean the private luxury suites located on the Club Level of the Alamodome.

1.26 Term means the period of this Agreement set forth in Article Three.

1.27 Ticket Sales means gross revenues derived from paid attendance to the Event during the Term of the Agreement less any applicable taxes.

1.28 Ticket Distribution Plan means the distribution and delivery of Event tickets as designated by the Licensee.

1.29 Ticketing Contractor means City's third-party contractor with the right to sell and distribute tickets on behalf of City for all events held at the Alamodome.

1.30 Use Days has the meaning given to it in Section 3.2 of this Agreement.

ARTICLE TWO

Scope

2.1 Scope of Event. The Events shall be the UTSA home intercollegiate football games, practices and walk-throughs occurring up to twenty-four (24) hours prior to such games ("Walk-through Period"), and public practices and all related activities during the term of this Agreement, scheduled in accordance with Section 3.5. Licensee agrees that all UTSA intercollegiate football home games played in San Antonio, Texas, will be played in the Alamodome, to the extent that the Alamodome is available on the necessary dates. Ninety (90) days prior to an Event, or earlier if the information is available, Licensee shall provide to City a complete Scope of Event, which shall be subject to the aforementioned approval by City. It is understood by Licensee that any substantive changes to the Scope of Event must receive the prior written approval of the Alamodome General Manager. In the event Licensee does not use the Alamodome for the entire Walk-through Period, City reserves the right to book other events in the Alamodome after obtaining Licensee's consent. Licensee shall provide City a schedule of each season's games 150 days prior to the first Event of that season.

2.2 Scope of Use.

(a) Event Areas. The following areas may be used for the purpose of an Event during the Term: the field area, all seating area, locker rooms, meeting rooms, Backstage Lounge area, Sports Club, Top of the Dome, South Club Eyebrow, North Plaza, and press box area. Set-up is the full stadium football field configuration. Areas reserved to others are excluded; specifically the Alamodome Executive Suites, certain Club Seats, Administration Offices, and such other office and storage areas as are reserved by third parties under contract with City.

(b) Storage Space. Throughout the Term, City will at all times provide to Licensee at least one thousand (1000) square feet of climate-controlled storage space ("Licensee Storage Space") for Licensee to store Licensee-owned equipment utilized for the Events. City will ensure access to the Licensee Storage Space will be controlled and limited to (i) Licensee's authorized employees at all times during the Term of this Agreement, and (ii) employees of the Office of the Assistant Director of Convention, Sports, and Entertainment Facilities in case of emergency.

(c) Athletic Recruitment and Marketing Tours. Throughout the Term, City will provide Licensee with reasonable access to the Alamodome for Licensee to conduct tours of the Alamodome for Licensee's athletic recruiting and marketing purposes. The tours must be approved in advance by the Alamodome General Manager. Such approval will not be unreasonably withheld.

2.3 Scope of Services.

(a) NCAA Facility; Structure. For each Event, City will use its best business efforts to ensure the Alamodome is (i) provided in a manner safe for public use in all respects, maintained in clean condition, and in good order, repair and condition; and (ii) an NCAA Facility in all respects, including without limitation, the Alamodome Suites, club seating, regular stadium seating, lighting, scoreboards, electronic and telecommunication equipment, locker and training rooms, sideline areas, field playing surface and turf, and concourses, restrooms, and other common areas. All obligations of City to comply with NCAA requirements are subject to fiscal appropriation by the City Council of the City of San Antonio.

(b) Required Services. For each Event, City will provide actual staffing services and other services that the parties mutually agree are reasonably required for operation of the Alamodome to efficiently and effectively execute each Event ("Required Services"). Such required services may include, but are not limited to: audio operators, bag checkers & entrance security screening, box office assistant manager (day of event), box office manager (day of event), box office services (advance and day of event), cleaning crew (pre/post Event), elevator operators, event coordinator, gate captains, housekeeping, in-house security, LED video system operating staff (day of event), parking attendants, PBX operator, ticket

takers, ushers, video production staff, wardrobe attendant, chairs, in-house equipment, LED video system, medical services for patrons, and all utilities. The fees for the Required Services, as more particularly described in Section 4.1(a), are included in the Building License Payment. At least three (3) days prior to each Event, Licensee and City will meet to discuss which of the above services will be needed for each Event Day,

(c) Playing Surface Conversion. For each Event, City will provide in the Alamodome an artificial turf playing surface in a manner and quality standard for an NCAA Facility. Licensee shall reimburse City for any installation of the artificial turf playing surface ("Field Conversion") that must occur prior to the first Event of each Contract Year. Licensee shall reimburse City as more particularly described in Section 4.1(b).

(d) Optional Services. Services that are available to Licensee at its option, include, but are not limited to, catering, insurance, medical services including ambulance for players, overnight security, riggers, scaffolding, spotlights and operators, stagehands, telecommunication systems and services, television production, LED Video Wall Production Staff, LED Video Ribbon Board Operating Staff to create graphics and production, t-shirt security, upper level banners, and other equipment, services, and staffing requested by Licensee. The fees for such optional services are not included in the Building License Fee. Should Licensee request any such optional services listed in this Section, Licensee shall be responsible for reimbursement to City as set forth in Section 4.1(c).

2.4 Changes in Scope. Should the Licensee elect to materially change the format of the Event from the collective uses outlined throughout this Agreement without prior Alamodome General Manager approval, City, at its option, shall have the right to terminate this Agreement in accordance with terms of Article Twenty-Two.

ARTICLE THREE

Term

3.1 Term. The term ("Term") of this Agreement will begin on the Effective Date and will expire on December 15, 2035, unless earlier terminated in accordance with the terms of this Agreement. "Contract Year" means that period of time beginning on the Effective Date and ending December 15, 2013, and each twelve (12) month period thereafter, during the Term.

Licensee may terminate this Agreement with five (5) years advance written notice to City in the following circumstances: (i) Licensee builds or acquires its own stadium that will be used to host Licensee intercollegiate football events similar to Events defined herein; or (ii) the Alamodome facility, including ancillary facilities such as parking or other appurtenances, or access to the Alamodome facility, is modified or maintained in

a manner and to the extent that the Alamodome facility is no longer suitable for Licensee's purposes.

City may terminate this Agreement with five (5) years advance written notice to University if the City Council votes affirmatively to close or demolish the Alamodome facility or to modify the facility in a manner that would cause it to be unsuitable for University's purposes.

3.2 Use Days. Use Days are those days during the Term that an Event is scheduled at the Alamodome in accordance with Section 3.5. Use Days will occur only in the following period during the term:

> August 25 through December 15 of each Contract Year ("Use Period").

3.3 Event Day(s). Event Days shall mean any day during which the Alamodome is used by Licensee under this Agreement.

3.4 Ingress/Egress Periods. Ingress/Egress periods begin at 6:00 a.m. of any Use Day and end at 11:59 p.m. on any Use Day or, if an Event runs late, a reasonable amount of time after the conclusion of the Game.

3.5 Scheduling of Event Dates

(a) Licensee and City shall work together in scheduling the Events. Prior to contracting with an opponent, Licensee shall obtain written confirmation from the City that such date is available. During the Use Period, City will not commit to or provide any entity the use of the Alamodome on Fridays or on Saturdays without first providing Licensee the right of first refusal for such use. City will not unreasonably withhold approval for Licensee's use of the Alamodome at any time during the Use Period. Licensee understands and acknowledges that if Licensee requests the use of the Alamodome during the Use Period, then City's approval shall be subject to events contractually committed to by City for a Contract Year prior to Licensee providing its schedule for that Contract Year.

(b) After the proposed schedule for an Event has been determined, should a conflict arise where the City, solely for reasons outside of its reasonable control, requires the use of the Alamodome on a date that has been scheduled for an Event, City will provide Licensee with at least ninety (90) days written notice, and Licensee and City will negotiate in good faith to reschedule Licensee's use of the Alamodome to mitigate such conflict.

ARTICLE FOUR

Payment

4.1 Amount of Payment.

(a) Building License Payment. In consideration for the license to use the Alamodome as provided in this Agreement, **Licensee and City agree that the Building License Payment shall be paid as follows:**

Reimbursement without mark-up to the City for actual staffing fees and other expenses incurred by City for providing the Required Services.

(b) Field Conversion. Licensee shall reimburse to City without mark-up for actual staffing fees and other expenses incurred by City from any Field Conversion that must occur prior to the first Event in each Contract Year ("Yearly Initial Field Conversion"). Fees for Yearly Initial Field Conversion will include only actual installation, and will not include dismantling or removal of any product or equipment that may be necessary to begin installation. Licensee shall pay to City the reimbursement for Yearly Initial Field Conversion within thirty (30) days after the first Event in each Contract Year. City will assume the costs for all other necessary Field Conversions (excepting the Yearly Initial Field Conversion).

(c) Optional and Additional Services. Licensee shall be responsible for reimbursement to City without mark-up for actual staffing fees and other expenses incurred by City from the City's completion of any optional services as described in Section 2.3(d) and any additional services as described in Section 8.2.

(d) Rate Sheets. By March 1 of each Contract Year, City will provide Licensee with City's Alamodome Rate Sheets describing the fees and expenses for such Contract Year for the Building License Payment and the Optional and Additional Services.

(e) Facility Access Fee. **Licensee shall reimburse City the Facility Access Fee for each Event.** The Facility Access Fee shall be utilized by City to defray the cost of providing traffic safety and control for Licensee's Event.

(f) Renewal and Improvement Fee. **Licensee shall reimburse City the Renewal and Improvement Fee for each Event..** The Renewal and Improvement Fee shall be utilized by City to fund Alamodome facility improvements and operational and maintenance costs.

4.2 Time of Payments. Licensee shall pay to City (i) the Building License Payment stipulated in Section 4.1(a), (ii) the fees and expenses incurred by City in providing any Optional and Additional services stipulated in Sections 4.1(c) and

8.2, (iii) the Facility Access Fee stipulated in Section 4.1(e), and (iv) the Renewal and Improvement Fee stipulated in Section 4.1(f) within thirty (30) days after completion of each Event, subject to Licensee's receipt of any supporting documentation reasonably requested by Licensee pertaining to said service costs and fees.

ARTICLE FIVE

Event Announcement, Ticketing, Suites and Credential Program

5.1 Event Announcement.

(a) Marketing & Announcements; Prior Notice to City. Prior to the announcement of the Event to the public, the Licensee will advise City through the Assistant Director of Convention, Sports, and Entertainment Facilities when and how the Event will be announced to the public. Except as expressly provided in this Agreement, City will not market, promote, nor advertise an Event without the prior written approval of Licensee. All Event marketing and promotional material, information, and announcements will be subject to Licensee's written approval prior to promulgation.

(b) Specific Alamodome Promotion of Licensee. Subject to the approval parameters of Section 5.1(c), City will promote the Alamodome as the "Home of the UTSA Roadrunners" through the Alamodome advertising mediums, including the Alamodome website, and the Alamodome exterior marquee. Subject to the approval parameters of Section 5.1(b), City, at its cost, will ensure University Marks (ref. Section 5.1(c)) are prominently displayed on the primary Alamodome exterior marquee. Upon request by Licensee, and subject to the approval parameters of Section 5.1(c), City will prominently install and display University Marks on the backlit panels of the Alamodome Video Wall System and Scoreboard, provided that Licensee pays City the cost for any such installation.

(c) University Marks. City understands and acknowledges that The Board of Regents of The University of Texas System owns all rights to the name, logos, trademarks, and symbols of the Licensee ("**University Marks**"). Any use of University Marks by City must have prior written approval of Licensee, and any use of University Marks outside the delineated uses found in this Agreement must be pursuant to a license issued by Strategic Marketing Affiliates ("SMA"), any successor to SMA identified by The University of Texas Office of Trademark Licensing ("OTL"), or a vendor properly licensed by SMA or approved in writing by OTL. In conjunction with this Agreement, City may use University Marks solely for the completion of its obligations and execution of rights granted herein, and only in accordance with the terms of this Agreement, including but not limited to, the prior written approvals set forth above. The parties acknowledge that once Licensee approves City's use of a University Mark in accordance with the terms of this Agreement, such approval shall be deemed granted throughout the term of the Agreement, provided that City's future use of the specific

approved University Mark remains within the parameters of the original Licensee approval. Licensee acknowledges and agrees that City shall not be responsible for any non-performance, or any delay in performance, on the part of City caused by any failure or unreasonable delay in receiving approvals of University Marks as provided in this Section.

5.2 Ticketing.

(a) Box Office & Distributor Sales. Licensee and City will determine a mutually agreeable ticketing process that will grant (i) Licensee the exclusive right to provide Event season tickets through Licensee's on-campus Box Office; (ii) Licensee the right to provide Student Tickets and individual Event tickets through Licensee's on-campus box office; and (iii) City the right to provide both advance and day-of-the Event individual Event tickets through the City's Box Office. Licensee understands and acknowledges that its capability to provide Event season tickets, Student Tickets and individual Event tickets is dependent upon Licensee ensuring that its box office system is compatible with City's Box Office system and that it may only exercise the rights set forth in (i) and (ii) above, so long as such actions do not conflict with City's exclusive agreement with a contractor to provide ticketing services at the Alamodome. Licensee understands and agrees that City may use City's Box Office for printing, manifesting and distributing advance and day-of-the Event individual admission tickets for the Event through the City's Box Office system. Licensee must contact City's Box Office Manager prior to making any arrangements for Event ticket sales and services.

(b) Settlement. All Event ticket revenue acquired by the City through any means, including without limitation revenue received by the City Box Office or the Ticketing Contractor shall be remitted to Licensee within ten (10) business days following completion of each Event. City, through its designated Box Office Manager or Agent, shall provide to Licensee an accounting of all tickets, returns and receipts for each Event. The City's Box Office Manager or Agent shall provide Licensee with a notarized Box Office Statement, and produce for Licensee's inspection all unsold tickets immediately following the Event. City shall have the right to make refunds of admissions where, in the sole discretion of the City, circumstances warrant it. Any such refunds made shall be considered as unsold tickets when making settlement of monies due to Licensee. City shall be responsible for any shortages in either ticket receipts or unsold tickets, except for shortages caused by negligence of ticket outlets not directly operated or controlled by City or the Ticketing Contractor.

(c) Ticket Charges. **Licensee shall pay to City Twenty-Five Cents ($.25) per ticket sold in person and by telephone through the City's Box Office or through the City's Ticketing Contractor. Licensee also shall pay to City three percent (3%) of the gross ticket sales (less taxes) paid by credit card through the City Box Office or Ticketing Contractor.** Licensee shall pay to City the fees stipulated in this Section 5.2(c) within thirty (30) days after completion

of each Event, subject to Licensee's receipt of any supporting documentation reasonably requested by Licensee pertaining to such amounts due.

(d) Limits. Admission tickets in excess of the seating capacity of the Alamodome, or which admit a larger number of persons to the Alamodome premises than can be safely seated and moved into the Alamodome premises shall not be sold, allowed, or caused to be sold or issued, and the decision of the Alamodome General Manager in this respect shall be final. City shall provide such capacity figures to Licensee prior to the sale of tickets for an Event.

(e) Date of Sale. City and Licensee agree to set a date when individual tickets for an Event will be offered to the public for the first time. No first day of ticket sales will be set on a date when another event is scheduled at the Alamodome, except by permission of the Alamodome General Manager.

5.3 Suites. The Alamodome currently maintains and operates fifty-two (52) Suites and City will continue to maintain at least such number of Suites throughout the Term unless the Parties mutually agree to allow for the renovation of Suites which alters the number available. Licensee shall have the option to use all but two of the Suites in the Alamodome ("Licensee Suites") for the duration of the UTSA Intercollegiate Football Games during the Term at no charge. City and Licensee agree that Licensee shall retain 100% of Suite (ticket) revenue from Licensee Suites. City shall use the two (2) remaining Suites, namely Suite numbers 233A and 233B, and Licensee agrees to furnish to City tickets to Events for those two (2) Suites at no cost to City. Alamodome catering services are available in all suites through the Alamodome Catering Contract upon Licensee's request. All arrangements for catering services and payment for those services will be between individual Suite occupants and the Caterer.

5.4 Credentials. Licensee, prior to distribution of Event admission credentials that provide certain rights to entry into an Event, shall present to the Alamodome General Manager, the Licensee's program for Event admission credentials, to include a hard copy of each credential type and any other pertinent details.

ARTICLE SIX

Utilities

6.1 Utilities. On all Use Days of the Term, the City shall furnish and have available at the Alamodome all utilities required for an NCAA Facility, and for the efficient, safe, and legal use of the Alamodome to present the Event. Upon completion of the Event, City shall have the right to turn off the HVAC (excluding Licensee Storage Space) and house lights and switch to emergency lights only.

6.2 Utility Reimbursement. **The cost for Utilities is included in the Building License Payment.**

ARTICLE SEVEN

Parking

7.1 Public Parking on Event Days. The Alamodome parking lots will be available for public parking on all Event days in accordance with applicable codes and ordinances of the City of San Antonio. The Alamodome does not allow in and out parking privileges. City reserves the right to operate and receive the income from parking operations for the Event at the applicable rate set by City ordinance. At its option, Licensee may elect to purchase for each of its intercollegiate home football games all available Alamodome parking spaces at a per-game price equal to the greater of (i) Twenty-Five Thousand Dollars ($25,000); or (ii) a total amount equal to the Alamodome parking rate set by City Ordinance multiplied by the number of available parking spaces (not to include the 300 parking spaces made available to Licensee free of charge pursuant to Section 7.2). For any Events other than Licensee's intercollegiate home football games, Licensee will have the option to purchase from City any or all of the Alamodome parking spaces generally available to the public at the Alamodome parking rate set by City Ordinance. For any Event for which Licensee has purchased Alamodome parking from City, including Licensee's intercollegiate home football game Events, Licensee will have the right to resell with mark-up such parking spaces to ticket holders for the Event, provided however, that if Licensee desires to resell the parking passes at a rate higher than double the rate set by City Ordinance, then such rate for parking fees charged to the public will be mutually agreed to by City and Licensee.

7.2 Licensee Parking Without Charge on Use Day. Notwithstanding any term or condition herein to the contrary, Licensee shall have the right to use, without charge to Licensee, three hundred (300) parking spaces in the Alamodome Parking Lot A during the Event.

ARTICLE EIGHT

Stadium Personnel and Services

8.1 Event Staffing.

(a) For each Event, City shall provide personnel reasonably necessary for the operation of the Alamodome for the Event as set forth in Section 2.3 (b). City shall provide personnel as requested by Licensee as set forth in Section 2.3 (d). The number and type of such personnel shall be mutually agreed upon at least three days (3) prior to the each Event Day during the Term. The cost to the City for furnishing said personnel shall be reimbursed by Licensee as provided in Sections 4.1(a), 4.1(c) and 4.2.

(b) San Antonio Police Officers and San Antonio Fire Marshals.

Licensee acknowledges that it shall be responsible for contracting with the City of San Antonio Police Department Off-Duty Employment Office for security services at each Event. Licensee also acknowledges that it shall be responsible for contracting with the City of San Antonio Fire Department to secure fire marshal services for the Alamodome premises at each Event. Licensee understands and acknowledges that it will be responsible for paying the costs of such services for each Event. City shall assist Licensee by (i) making the arrangements for such services, and (ii) taking all reasonable actions necessary to ensure an overall security plan that is sufficient and cost effective. However, for purposes of the Fair Labor Standards Act (FLSA), City and Licensee shall at all times remain separate and independent employers. Therefore Licensee will be billed directly from the San Antonio Police Department Off Duty Employment Unit and the San Antonio Fire Department for the costs associated with employing police services and fire personnel for an Event. City will use reasonable efforts to coordinate with and provide to Licensee's Police Department any information regarding security concerns at an Event that involve students enrolled at The University of Texas at San Antonio.

8.2 Additional Services Requested by Licensee. Upon timely request of the Licensee and approval of the Alamodome General Manager, City shall provide reasonable additional services in support of the Event's activities.

8.3 Licensee Responsibilities. Licensee shall be solely responsible for providing Artistic Interpretation support personnel for the hearing impaired, back stage security personnel, and electrical hook-up support personnel. City will provide to Licensee, at least thirty days (30) prior to the first Use Day of the Term, the City's required qualifications for any company or representative that provides these services in the Alamodome

ARTICLE NINE

Concession and Novelty Revenues

9.1 Concessions. The Alamodome Concessionaires ("Concessionaires") reserve the right to operate and receive their percentages of the income from Concessions sold at the Events. Such concessions shall include, but not be limited to, the dispensing or sale of food and beverages, but shall not include Novelties (as defined below). City will ensure that adequate concessions are available for each Event.

9.2 City's Right to Concession Revenue. City shall be entitled to receive its percentage of the income from Concessions provided for in its agreement with the Concessionaires.

9.3 Novelties. **At each Event, Licensee will have the exclusive right to sell souvenirs, novelties, and programs that directly relate to Licensee**

(the "Novelties") or the Event. Licensee shall retain all revenue from such sales.

9.4 Concession Area. Licensee shall provide adequate space on the main stadium floor to City for the purpose of concession sales based on type of event (if applicable). Location of said space shall be mutually agreed upon by both Licensee and City. This section does not apply to the football field, or sideline and end zone areas in football related events.

9.5 Disputes. To the extent authorized by applicable law, Licensee agrees that the City's Assistant Director of Convention, Sports, and Entertainment Facilities shall be the arbiter in any dispute that may arise under this Article Nine.

ARTICLE TEN

Catering

10.1 Catered Events. Licensee and City agree to enforce and to use reasonable efforts to inform all participants including guests, parents, school faculty, sponsors, and volunteers that outside food and beverages, including ice chests, shall not be allowed inside the Alamodome, nor shall they be delivered to the Alamodome on Event Days. This provision also applies to Licensee and all vendors hired by Licensee to provide services prior to each Event Day door opening and during Event Days in progress. Licensee acknowledges that City has previously granted exclusive catering and concessionaire licenses to the Alamodome Caterer and Concessionaires for the right to provide Catering Services and Concessions in the Alamodome. No other party shall be allowed to provide catering, concessions or delivery service inside or on the Alamodome premises. Licensee shall use City's Caterer and Concessionaires in accordance with guidelines promulgated by City's Alamodome General Manager. Food and beverage services, including water, are to be arranged through the City's designated Caterer at Licensee's expense. The restriction concerning food and drink products does not apply to team hydration and nutrition as customarily provided to team personnel on the sidelines and in the locker rooms, nor to nutritional and dietary supplements and sports medicine-required items pursuant to NCAA rules and regulations.

10.2 INTENTIONALLY DELETED.

10.3 Beverage Containers. City represents that beverages will not be sold in glass containers at any Event.

ARTICLE ELEVEN

Staging, Lighting, Sound

11.1 Staging. At Licensee's option and expense, a standard 60' x 40' concert quality stage shall be made available for Licensee's use during the Event. Also, at Licensee's option and expense, 4x8 stage risers, at a cost of $35 per riser section, shall be made available for Licensee's use during the Event.

11.2 Staging Costs. If Licensee elects to use the stage, Licensee shall pay City for the costs associated with the use of said stage ($2,500 per day), and other equipment as listed on the equipment list attached hereto and made a part hereof (if applicable). Licensee, at its own expense and liability, shall be responsible for the construction, installation, and removal of any additional staging and all stagehand personnel required for the presentation of the Event. Installation and removal of such additional staging shall be coordinated with the Alamodome General Manager.

11.3 Sound Equipment. The use of the sound equipment is included in the Building License Payment.

11.4 NCAA Facility Standard for Staging, Lighting, Sound. City will maintain the Alamodome staging, lighting, and sound equipment and services in a manner and quality standard for an NCAA Facility.

11.5 Additional Lighting. Licensee, at its own expense and liability, shall be responsible for additional lighting that is not permanently installed in the Alamodome, which Licensee may desire or require for the presentation of the Event.

11.6 Emergency Lighting: City reserves the right to operate and control stadium lighting when deemed necessary (i.e. fire alarms, crowd emergency).

ARTICLE TWELVE

Alamodome Stadium Video Wall System and Scoreboard

12.1 NCAA Facility Standard for Video Wall System and Scoreboard. City will maintain the Alamodome Stadium Video Wall System and Scoreboard in a manner and quality standard for an NCAA Facility.

12.2 Licensee Use. The Alamodome Stadium Video Wall System and Scoreboard shall be made available for Licensee's use during the Event.

12.3 Licensee Costs. The use of the Alamodome Video Wall System and

Scoreboard including the operating staff costs are included in the Building License Payment.

12.4 Video Rights. City, or its designee, shall have the right to videotape and take photographs of the Event. Videotape and photographs taken by City, or its designee, shall remain property of City and used for operational or facility promotional purposes only in accordance with the terms and conditions of Section 5.1(c).

ARTICLE THIRTEEN

Communications

13.1 NCAA Facility Standard for Communication System/Services. City will maintain the Alamodome Communication System/Services in a manner and quality standard for an NCAA Facility.

13.2 Licensee Use. Upon Licensee's request, the Alamodome Communication System/Services shall be made available through City for Licensee's use during the Event. To the greatest extent practicable, Licensee may not use any other communication system or services other than those provided by City without City's agreement in writing, which agreement may not be unreasonably withheld. A list of the Communication System/Services is attached to this License Agreement. Alamodome Communications is the sole provider of Communication Services. City acknowledges that certain third-party vendors and providers of Licensee, such as radio and television networks, may require their own personnel and equipment to be used in some circumstances.

13.3 Licensee Costs. If Licensee uses the Communication System/Services, Licensee shall pay to City the costs associated with the use of said communication system. It shall be Licensee's responsibility to notify all subcontractors and third party vendors associated with Event that they will be billed in advance, from City, for the costs associated with the use of said communication systems. To the extent authorized by the Constitution and laws of the State of Texas, Licensee agrees that City shall hold Licensee responsible for any unpaid invoices from subcontractors and third-party vendors associated with the Events.

ARTICLE FOURTEEN

Damages, Risk and Security

14.1 Damages. If the Alamodome premises, or any portion thereof, including any of its fixtures, furniture or furnishings, during the term of this Agreement shall be damaged by the act, default or negligence of Licensee, or of Licensee's agents, employees, subcontractors, vendors, patrons, guests, or any

person admitted to the Alamodome premises by Licensee, Licensee will pay to City such sum as shall be reasonably necessary to restore the Alamodome premises to its previous condition. The Alamodome General Manager shall reasonably determine whether any damage has been done, the amount of the damage, the reasonable cost of repairing it, and whether, under the terms of this Agreement, Licensee is to be held responsible. City reserves the right to withhold from final settlement an amount sufficient to cover all or part of such damages. Should any such damage occur, City shall provide documentation, as reasonably requested by Licensee, that demonstrates the extent of the damage and the estimated costs of restoration or repair. City understands and acknowledges that Licensee's authority to fully agree to the provisions of this Section is limited to the extent authorized by the Constitution and laws of the State of Texas.

14.2 Risk and Security. Licensee assumes all risk of damage to its property and/or the loss by theft or otherwise, of any property of the Licensee, its employees, and/or its exhibitors, and no claim shall be made upon the City because of any such loss unless same is due to (i) the negligence of City or (ii) an intentional or willful tort committed by City as determined by a Court of Law. The Licensee shall be responsible for the provision of security during the term of this Agreement for any property brought onto the Alamodome grounds by the Licensee, its employees, and/or its purveyors.

ARTICLE FIFTEEN

Copyrighted Material

15.1 Copyrighted Usage. Licensee agrees to obtain all necessary licenses and take all other necessary steps to ensure that Licensee's use of copyrighted materials in the Alamodome during the term of the Licensee's Agreement complies with United States and any other applicable copyright law. City shall not be liable to any third party for Licensee's failure to comply with this Section.

ARTICLE SIXTEEN

Advertising

16.1 Rights. It is understood by Licensee that City is responsible for all permanent commercial advertising rights throughout the Alamodome premises to various advertisers for valuable consideration. To protect the advertising rights of City, only the following methods of promotion and commercial advertising by Licensee and any Event sponsors on the Alamodome premises shall be permitted:

(a) Display of products and services by exhibitors in connection with trade or consumer shows or business conventions;

(b) Advertising in Event programs, on Event tickets, or in other similar Event materials;

(c) If the Event is broadcast, the broadcast station can display one (1) temporary identification banner. If additional banners are to be displayed, a proposed display plan will be presented to the Alamodome General Manager for approval prior to the Event. The type, location, installation, and removal of banner(s) must receive prior City approval. The City's approvals as required in this Section will not be unreasonably withheld. In any event, all temporary advertising is subject to the non-alcoholic advertising restrictions below; and

(d) Temporary Event sponsor identification including banners, temporary panels, and other types of promotional items and displays and visual acknowledgment during the Event so long as such identification does not conflict with the terms of City's existing sponsorship or concession agreements or the City's advertising concessions program. City will provide to Licensee the applicable information related to City's sponsorship or concession agreements or programs to allow Licensee to comply with such terms. The type, content, location, installation, and removal of sponsor identification must receive prior approval from the Alamodome General Manager. Such approval will not be unreasonably withheld.

16.2 Exclusive Rights. Notwithstanding anything to the contrary set forth herein, City and Licensee agree that at all times during the Event, the non-alcoholic beverage advertisers of City (the "Advertisers") shall have the following exclusive rights:

(a) the exclusive rights to sell non-alcoholic beverages to the public at the Alamodome and all parking lots south of Montana Street, walkways, driveways and plaza areas included within the Alamodome complex; and

(b) the exclusive right to all non-alcoholic beverages advertising in any form placed in the Alamodome and all parking lots, walkways, driveways and plaza areas included within the Alamodome complex.

16.3 Exceptions. Licensee will be permitted to display temporary non-alcoholic beverage sponsor identification at Events, including banners, temporary panels, and other types of temporary promotional items and displays and visual acknowledgment during the Event, so long as such identification does not conflict with the terms of City's existing agreement with its non-alcoholic beverage provider. No other exceptions to the above methods of promotion and commercial advertising shall be permitted during the Term without prior approval of City. To the extent authorized by the constitution and laws of the State of Texas, Licensee shall be responsible for communicating the terms of this Article 16 to the Event sponsors and for full compliance with the restrictions stated herein.

16.4 Turf Sponsorship. City and Licensee agree that the Licensee shall

have the right to sell NCAA approved turf sponsorship insignias at the 50-yard line and at the 25-yard lines. All costs associated with construction of turf panels shall be at the expense of Licensee. Final approval of turf sponsorship must be obtained from the Alamodome General Manager prior to any insignia being depicted onto the turf. Such approval will not be unreasonably withheld. In no event will any such Turf Sponsorship be approved that is in an advertising category that competes with an Alamodome Naming Rights Sponsor or a potential Alamodome Naming Rights Sponsor, as defined below.

16.5 Alamodome Naming Rights. In the event City reaches an agreement with a sponsor for naming rights at the Alamodome ("Alamodome Naming Rights Sponsor"), City shall work with the Alamodome Naming Rights Sponsor and Licensee to assist them in reaching a sponsorship partnership. No contract with an Alamodome Naming Rights Sponsor shall limit any of Licensee's rights under this Agreement, including without limitation, any Licensee rights related to sponsor identification, subject to the provisions of Section 16.4.

ARTICLE SEVENTEEN

Licensee Property

17.1 No Removal Policy. Licensee shall be responsible for removing from the Alamodome on or before 11:59 p.m. on the last Use Day of the Event or, if later, a reasonable time after the conclusion of the Event during the Term, all property, goods, and effects belonging to Licensee and its employees, or caused by it to be brought upon the Alamodome premises for the Event. If such property is not removed within the above-stated time, the City shall have the right to remove and/or store such property, goods, and effects at the Licensee's expense. To the extent authorized by the constitution and laws of the State of Texas, Licensee assumes all risk of damage and/or loss, by theft or otherwise, to the property, goods, and effects of Licensee and its employees, and exhibitors incurred during any removal and/or storage activities by City.

ARTICLE EIGHTEEN

Restrictions

18.1 Restrictions. The following restrictions shall apply to the Event throughout the Term of this Agreement:

Specifically, Licensee shall not be allowed to bring into or conduct within the Alamodome the following:

- Any items that if released, will rise into the air without any external force being applied (e.g. helium inflated balloons);
- Live animals and insects unless properly and sanitarily kept and

maintained in a cage; PROVIDED, no animals or insects that pose a potential threat to public safety and health will be allowed;
- Food and drink products that can be consumed on the Alamodome premises;
- Raffles or games of chance that do not meet the requirements of City of San Antonio Code;
- Distribution of flyers, pamphlets, handbills and any type of adhesive stickers on seating areas in the dome;
- Any other item that City reasonably deems improper for display at the Event.

(a) The restriction concerning live animals does not include service animals designated to provide assistance to individuals with disabilities. Exceptions to the restriction concerning live animals may be granted by the Alamodome General Manager when the request is made in writing, at least thirty (30) days prior to the event, describing the activities of such animals.

(b) The restriction concerning food and drink products does not apply to team hydration and nutrition as customarily provided to team personnel on the sidelines or in the locker rooms, nor to nutritional and dietary supplements and sports medicine-required items pursuant to NCAA rules and regulations.

(c) All Event exhibitors will be subject to inspection by licensed law enforcement officers throughout the Term of the Event relative to the display and sale of items. Proper records for verification of ownership and title to sell items by exhibitors must be available at all times for inspection by law enforcement officers.

(d) To the extent authorized by the constitution and laws of the State of Texas, Licensee shall be responsible for fully communicating the restrictions and inspection requirements outlined herein to all Event exhibitors and full compliance with restrictions stated herein.

ARTICLE NINETEEN

Broadcasting

19.1 Transmission via Communications System. Subject to Section 13.2, all broadcasts of the Event shall be transmitted via the Communication System/Services. No other means of broadcast shall be allowed. Nevertheless, it is understood that certain third-party vendors and providers, such as television networks, may require their own personnel and equipment to be used in some circumstances.

19.2 Broadcasting Rights. Licensee shall have and retain exclusive broadcast and reproduction rights incident to the presentation of the Event during and after the Term, including, but not limited to, radio and television rights and, in general, the rights to all items produced by whatever means or process now

existing or hereafter developed for preserving, transmitting, and reproducing for hearing and/or viewing the Event presented in the Alamodome. Licensee shall retain all proceeds from such broadcast and reproduction rights.

19.3 Broadcasting Facilities. With regard to said broadcast and reproduction rights, City shall cooperate with Licensee and with the parties actually producing any such broadcasts and reproductions in all phases of the preparation, broadcasts and any production thereof. In connection with any such broadcast and reproduction activities, City shall provide access to the Alamodome and, at Licensee's cost, the necessary maintenance personnel and all necessary facilities and utilities at the request of Licensee. Licensee shall be authorized to issue a reasonable number of credentials for admissions to the Alamodome for personnel engaged in such broadcasts and reproductions and the installation and removal of broadcast and reproduction equipment.

ARTICLE TWENTY

INDEMNIFICATION

20.1 **Licensee and City each acknowledge that each is an agency and institution of higher education of the State of Texas or a political subdivision of the State of Texas and that each is subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practice and Remedies Code, Section 101.001 et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.**

ARTICLE TWENTY-ONE

INSURANCE

21.1 Licensee and City each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

ARTICLE TWENTY-TWO

TERMINATION

22.1 In the event of a material failure by a party to this Agreement to perform in accordance with the terms of this Agreement, the other party may terminate this Agreement upon thirty (30) days' written notice of termination setting forth the nature of the material failure; provided that the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the thirty-day period.

22.2 Suspension of Football Program. Performance by Licensee of its obligations under this Agreement is dependent upon the continued existence of the football program of Licensee. In the event Licensee's football program is suspended or discontinued for any reason, then Licensee shall issue written notice thereof to City and Licensee may terminate its obligations under this Agreement without further duty or obligation hereunder.

ARTICLE TWENTY-THREE

MISCELLANEOUS

23.1 Powers of the City & State. Nothing contained in this Agreement shall be considered to diminish the governmental or police powers of either the City or the State of Texas.

23.2 Right of Entry. Alamodome employees, officials and authorized licensees and tenants shall have the right at all times to enter upon the premises in the performance of their duties, and will be issued proper identification credentials, as needed, by the Alamodome/Convention, Sports, and Entertainment Facilities Director's Office, which the Licensee shall honor

23.3 Removal of Persons. City reserves the right to eject or cause to be ejected from the Alamodome premises, any person or persons violating the rules or regulations of the Alamodome or any City, County, or State law or ordinance; and neither the City nor any of its officers, agents, or employees shall be liable to the Licensee for any damages that may be sustained by the Licensee through the exercise by the City of such right.

23.4 Impossibility. City shall not be responsible for its failure to make all or portions of the Alamodome available or to provide the facilities and services described herein nor shall Licensee be responsible for its failure to present the Event in the Alamodome where such performance is rendered impossible or impracticable due to strikes, walk-outs, acts of God, inability to obtain labor, materials, or services, government restrictions, enemy action, civil commotion, fire, unavoidable casualty, or similar causes beyond the control of the City.

23.5 Books, Records, and Inspections.

(a) Licensee Records. Licensee shall keep accurate books and accounts of the matters upon the basis of which payments specified in Article Four are to be computed and ascertained. Such books and records shall be open and available for inspection by the City upon the official request of the Alamodome General Manager, with 72 hours prior notice, during regular working hours between Monday and Friday, any time during the Term of the Agreement, excluding holidays of Licensee. All such books and records will be maintained by Licensee throughout the term of this Agreement and for a period of four (4) years after the expiration or earlier termination

of this Agreement. At any time during the Term of this Agreement and for a period of four (4) years thereafter, City or a third party engaged by City will have the right to audit Licensee's records and books relevant to all services provided and payments made under this Agreement. City agrees to use its best efforts to keep the information acquired from the examination of such books and records confidential and that it will not disclose any of such information directly or indirectly or use such information for any purpose during the Term of the Agreement or any time thereafter except with respect to the disclosure of information concerning the amount of the use payments made to the City pursuant to Section 4.1, and except with respect to the disclosure of information which is required by the laws of the State of Texas, pursuant to the Texas Public Information Act, Texas Government Code Chapter 552 (the "Act"). Licensee shall comply at all times with the Texas Public Information Act and any records of this Event deemed to be public information under said Act, and not excepted or exempted from disclosure, shall be made available to City upon request in accordance with the Act.

(b) City Records. City shall keep accurate books and accounts of the matters upon the basis of which payments are due to Licensee under this Agreement. Such books and records shall be open and available for inspection by Licensee upon the official request with 72 hours prior notice, during regular working hours between Monday and Friday, any time during the Term of the Agreement. All such books and records will be maintained by City throughout the term of this Agreement and for a period of four (4) years after the expiration or earlier termination of this Agreement. At any time during the Term of this Agreement and for a period of four (4) years thereafter, Licensee or a duly authorized audit representative of Licensee, The University of Texas System, or the State of Texas, at its expense, will have the right to audit City's records and books relevant to all services provided under this Agreement. Licensee agrees to use its best efforts to keep the information acquired from the examination of such books and records confidential and that it will not disclose any of such information directly or indirectly or use such information for any purpose during the Term of the Agreement or any time thereafter except with respect to the disclosure of information concerning the amount of the Building License Fee made to the City pursuant to Section 4.1, and except with respect to the disclosure of information which is required by the laws of the State of Texas, pursuant to the Texas Public Information Act, Texas Government Code Chapter 552. City shall comply at all times with the Texas Public Information Act and any records of this Event deemed to be public information under said Act, and not excepted or exempted from disclosure, shall be made available to Licensee upon request in accordance with the Act.

23.6 Notices. Any notice or communication hereunder shall be in writing, and may be given by registered or certified mail. If given by registered or certified mail, the notice or communication shall be deemed to have been given and received when deposited in the United States Mail, properly addressed, with postage prepaid. If given otherwise than by registered or certified mail, it shall be deemed to have been given when delivered to and received by-the party to whom it

is addressed. Such notices or communications shall be given to the parties hereto at their following addresses:

If to the Licensee:
Lynn Hickey
Director of Intercollegiate Athletics
The University of Texas at San Antonio
One UTSA Circle
San Antonio, TX 78249-1644
(210) 458-4444 office

With a copy to:
Pamela S. Bacon
Associate Vice President for Administration
The University of Texas at San Antonio
One UTSA Circle
San Antonio, TX 78249-1644
(210) 458-6551

And to:

University of Texas System
Office of General Counsel – Real Estate Office
201 W. 7th Street, Suite 416
Austin, Texas 78701
Attention: Executive Director

If to the City:
Michael J. Sawaya, Director
Convention, Sports, & Entertainment Facilities
200 East Market Street

San Antonio, TX 78203
(210) 207-3663

With a copy to:
City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, TX 78283-3966

Either party hereto may, at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the foregoing address to which such notice or communication shall be given.

23.7 Nondiscrimination. Both parties agree to comply with all applicable Federal, State, and County laws regarding nondiscrimination, and specifically agree

not to discriminate against any employee or applicant for employment because of age, race, color, religion, creed, sex, national origin, marital status or the presence of any sensory, mental, or physical handicap.

23.8 Taxes. Licensee agrees to pay on a current basis all taxes or assessments, if applicable, levied on its activities and property; PROVIDED, however, that nothing contained herein shall modify the right of the Licensee to contest any such tax, and Licensee shall not be deemed to be in default as long as it shall, in good faith, be contesting the validity or amount of any such taxes.

23.9 Non-Waivers. Neither the waiver by either party to this Agreement nor any breach of any agreement, covenant, condition, or provision thereof, nor the failure of either party to seek redress for violation of, or to insist upon strict performance of, any such agreement, covenant, condition, or provision, shall be considered to be a waiver of any such agreement, covenant, condition, or provision or of any subsequent breach thereof. No provision of this Agreement may be waived except by written agreement of the party to be charged.

23.10 Texas Law Controlling: Where Actions Brought. This Agreement shall be deemed to be, and is, made in and shall be in accordance with the laws of the State of Texas, which will be controlling in any dispute that arises hereunder. Actions pertaining to this Agreement shall be brought in Bexar County, City of San Antonio, Texas.

23.11 Section Headings. The section headings contained herein are only for convenience and reference and are not intended to be a part of this Agreement or in any manner to define, limit, or describe the scope or intent of this Agreement or the particular sections to which they refer.

23.12 Entire Agreement. This Agreement constitutes the entire Agreement between the City and the Licensee and may not be altered, amended, or modified except by an instrument in writing signed by the parties hereto with the same formality as this Agreement. This Agreement supersedes and replaces any prior Agreement between the Parties concerning this subject matter, including without limitation the agreement entered into between the Parties effective as of November 2, 2010.

23.13 No Partnership. Nothing contained herein shall make, or be deemed to make, the City and Licensee a partner of one another, and this Agreement shall not be construed as creating a partnership or joint venture, but only the relationship of licensor and licensee.

23.14 Singular and Plural. Wherever the context shall so require, the singular shall include the plural and plural shall include the singular.

23.15 Alamodome Tours. City shall not conduct or permit tours of the

Alamodome on the day of the Event without prior consent of Licensee, except that where City has contracted with a person or persons for a non-public group tour prior to the execution of this contract. Said tour will be permitted in those areas of the Alamodome mutually agreeable to City and Licensee.

23.16 Permits and Licenses. It is understood and agreed that the Licensee is responsible for obtaining all permits and licenses necessary for completing its obligations under this Agreement.

23.17 Compliance with Applicable Law.

(a) Compliance by City and Licensee. Both parties, in completion of their obligations under this Agreement, shall be responsible for compliance with all applicable laws, statutes, codes, and regulations, including without limitation those relating to providing a safe working environment to employees and, specifically, the requirements of the Texas Industrial Safety and Health Act (TISHA), and the Americans with Disabilities Act (ADA).

(b) Assistive Listening Devices. City shall make available, at no cost to Licensee, a Telflex AAR-1 Assistive Listening System, consisting of a transmitter and wireless receivers for use during the events. Licensee in compliance with the provisions of the ADA, may:

(i) Utilize the provided system or supply one of its own;

(ii) Advertise the availability of the assistive listening devices through the use of on-site signs, brochures and/or distributed promotional materials; and

(iii) Maintain an audio feed to the system. City is responsible for the proper storage, collection and prompt return of the loaned devices at the end of the Event.

23.18 Licensee shall require that all of its subcontractors and vendors performing services pursuant to this Agreement comply fully with the terms and conditions of this Agreement.

23.19 Severability. If any term(s) or provision(s) of this Agreement or the application of any term(s) or provision(s) of this Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement, or the application of such term(s) or provision(s) of this Agreement to other situations, will remain in full force and effect unless amended or modified by mutual consent of the parties; provided that, if the invalidation, voiding or unenforceability would deprive either the City or Licensee of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then the City and Licensee will meet

and confer and will make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable to the City and Licensee.

23.20 Assignments. Neither City nor Licensee shall assign or transfer its respective interest in this Agreement without the written consent of the other party. Any attempt to transfer, pledge or other assignment shall be void ab initio and shall confer no rights upon any third person or party.

23.21 Boldface Terms. All terms and words in this License Agreement that are in "boldface" script control over and in lieu of all other inconsistent terms and words in this Agreement.

23.22 Board of Regents Approval. This Agreement is not effective for value exceeding One Million Dollars ($1,000,000.00) in the aggregate until approved by the Board of Regents of The University of Texas System.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF SAN ANTONIO

By:_____
Sheryl Sculley
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

THE UNIVERSITY OF TEXAS AT SAN ANTONIO

By:_____
Kerry L. Kennedy
Vice President for Business Affairs

ATTEST:

_____

SAN ANTONIO
DEEP IN THE HEART.

Item # 16

UTSA License Agreement

UTSA ROADRUNNERS

City Council
September 6, 2012

Convention, Sports, and Entertainment Facilities
Michael Sawaya, Director

Background

SAN ANTONIO
DEEP IN THE HEART.

- UTSA enjoyed a successful 2011 inaugural season in the Alamodome, averaging 35,521 attendees per game

- UTSA set a record for the highest-attended game for an NCAA Division I FCS start-up program at 56,743

License Agreement Key Provisions

- Original agreement dated October 21, 2010 for an initial term of 5 years with two one-year options through December 15, 2017
  - *Amendment extends agreement through Dec. 15, 2035*
- UTSA will:
  - Reimburse City for staffing costs and other expenses est. at $30k-$40k per game
  - Retain all ticket, souvenir, and program sales
  - Receive temporary advertising rights during its games
  - Retain all associated advertising sales revenue, including field sponsorship opportunities

License Agreement Key Provisions

- UTSA has right to sell 40 suites and retain the rental and ticket sales; splits revenue from 10 suites with City
  - *Amended to 50 suites, with UTSA retaining <u>all</u> ticket revenue*
  - City retains 2 suites at no cost
- City will:
  - Retain all concessions and catering sales commissions (No Change)
  - Retain all parking revenue at $10/car, but will provide 200 spaces per game at no cost
  - *Amended to 300 spaces*

Conclusion

- UTSA moves into ConferenceUSA in 2013
- *Alamodome is also expected to host some conference basketball games*

- This agreement is expected to generate approximately $864,000 annually in net revenue for the Alamodome

Staff Recommends Approval of a Revised and Restated Alamodome License Agreement with UTSA