

SERVICE AGREEMENT FOR MANAGEMENT OF AMERICAN BANK CENTER

THIS **Service Agreement for Management of American Bank Center** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and SMG ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager") and approval by City Council.

WHEREAS, Contractor has bid to provide Management Services for the American Bank Center in response to Request for Proposal No. 1222 ("RFP"), which RFP includes the required scope of work and all specifications and which RFP and the Contractor's proposal response, as applicable, are incorporated by reference in this Agreement as Exhibits 1, 2, and 3 respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

1. **Scope.** Contractor will provide Management Services for the American Bank Center ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety, and in accordance with Exhibits 2 and 3. Services will include management of the Selena Auditorium, the Bayfront Plaza Convention Center, and the Arena facility located at 1901 N. Shoreline Blvd. (the "Facility"). The City grants Contractor the right and authority to manage the Facility in its own name and not as an agent of the City.
2. **Exclusive Rights.** The City hereby grants to Contractor, subject to the terms and conditions of this Agreement, the "Exclusive Right" to operate themselves or to contract with outside concessionaires for vending machines and for the provision of the Foodservices, to oversee the provision of those services by such concessionaires, and to allow such concessionaires the exclusive use of the foodservice premises at the Facility, subject to any limitations contained in this Agreement. The foodservice premises does not include the area outside of the Facility, such as parking lots or the Barge Dock. The City grants Contractor the exclusive rights to sell novelties, souvenirs, programs, records, tapes, clothing and gifts (collectively, "Novelties") at all Events held at the Facility.

(A) The following shall be excluded from the Exclusive Right to provide Foodservices:

- i. Foodservices provided at fair or festival-type Events at the Facility may be excluded if, in the opinion of the City, the selling of the items from booths is an important part of the Event. Additionally, the Exclusive Right to provide Food and Beverage Services shall not prevent or prohibit an exhibitor from distributing without charge a sample portion of the type of food or merchandise manufactured and distributed in the normal course of the exhibitor's business, or from selling food items intended for consumption off the premises.

- ii. Contractor does not have exclusive rights to Foodservices provided at the Buccaneer Days festival. The City has entered into an agreement, which allows vending of food and alcohol at Buccaneer Days at specific locations adjacent to or within the Facility by persons other than the Contractor.
 - iii. The City may, at the City's discretion, enter into agreements regarding the Fiesta de la Flor event or other events held in the vicinity of the Facility, which allow vending of food and alcohol at specific locations adjacent to or within the Facility by persons other than the Contractor.
- 3. **No Sale of Property.** Contractor shall have no authority to sell or otherwise alienate any portion of the Facility or any equipment therein. Contractor shall notify the City of any property deemed surplus and follow City instructions regarding the property's disposal.
- 4. **No Capital Improvements.** The Contractor shall have no authority to make any alterations or any capital improvements to the Facility without the prior written consent of the City. Should Contractor be responsible for any public works projects at the Facility, Contractor shall require payment bonds for any projects over \$50,000 and performance bonds for any projects over \$100,000. Any required bonds shall require City approval. Any contracts for construction of public works at the Facility must comply with Chapter 2258 of the Texas Government Code, or its successor, as amended.
- 5. **Purchasing Procedures.** The Contractor shall have the authority and discretion as to the purchase of all equipment, materials, supplies, and inventories reasonably required by it but shall endeavor to make all such purchases at the best price available, considering the quantities required and the quality desired. In doing so, Contractor must comply with prudent purchasing practices.
 - (A) The Contractor may purchase or procure services from Affiliates of the Contractor, provided that the prices charged and the services provided are competitive with those obtainable from unrelated parties rendering comparable services. Contractor shall, at the City's request, provide reasonable evidence establishing the competitive nature of such prices and services. Prior to engaging any of its Affiliates, Contractor shall notify the City, and the City may require the Contractor to obtain at least two other competitive bids for unrelated parties to ensure that such services are being provided on competitive terms.
- 6. **Term.** This Agreement begins on January 1, 2018 and expires on September 30, 2023 unless extended or terminated sooner pursuant to the terms of this Agreement. This Agreement includes an option to administratively extend the term for up to three additional 12-month periods ("Option Period"), provided, the parties do so prior to expiration of the original term or the then-current Option Period. The decision to exercise the option to extend the term of this Agreement is, at all times, within the sole discretion of the City and is conditioned upon the prior written agreement of the Contractor and the City Manager.
 - (A) **Transition Period.** The time period from January 1, 2018 to January 31, 2018 shall serve as a transition period. During the transition period, the City's current contractor will

continue the day-to-day management of the Facility. City shall work to allow Contractor to observe the management of the Facility and obtain information about upcoming events which the Contractor will manage once the transition period has ended. The City will work with the current contractor to provide access to the Facility for the Contractor and to obtain answers to any questions the Contractor might have regarding processes and upcoming events. Contractor will begin managing the Facility effective February 1, 2018.

(B) **Ending Transition.** Contractor agrees that, when this Agreement expires or is otherwise terminated, Contractor will participate in a 30-day transition period with the City or any replacement contractor for the last 30 days during which Contractor is managing the Facility. During that time, Contractor will continue to manage the Facility and plan events, but will allow the City or the replacement contractor to observe, participate, and ask questions regarding the management of the Facility and any upcoming events which the City or the replacement contractor will manage following the termination of this Agreement.

7. Base Compensation and Payment. A total not-to-exceed value of \$16,557,717.15 has been established as the total contract value over the base term of the contract excluding capital contributions to be determined. This value is broken out by type of compensation and outlined in Attachment B. As base compensation to Contractor for providing the services hereunder, City shall pay Contractor during the Management Term an annual fixed fee in accordance with Fee Schedule attached hereto as Attachment B. Such fee shall be payable in equal monthly installments due on or before the last day of each month during such Fiscal Year.

8. Incentive Fee. In addition to the Fixed Management Fee, Contractor shall be eligible to earn an Incentive Fee each full or partial Operating Year of the Term. The Incentive Fee shall be comprised of both a qualitative based fee (“Qualitative Fee”) and a quantitative based fee (“Quantitative Fee”), as follows:

(A) **Qualitative Fee.** Contractor shall be eligible to earn a Qualitative Fee of up to \$50,000 in each Operating Year (pro-rated for any Operating Years of less than a full 12 months based on the actual number of days elapsed in such Operating Year out of 365). The Qualitative Fee shall be determined by the City, in its reasonable and good faith discretion, based on its evaluation of Contractor’s performance each Operating Year in each of the following five performance areas. The Qualitative Incentive fee shall be subject to annual appropriation in the operating budget of the City.

- i. **Customer Satisfaction Scores.** Contractor shall demonstrate quality service to customers of the Center on evaluations related to Center operations and services, including evaluations related to food quality, food and beverage concessions, catering services and servicing of conventions and meetings. Contract Administrator and Contractor shall cooperate in determining the form and components of the service evaluations and the process for administering such service evaluations. **(Up to 30 points)**
- ii. **Joint CVB/Contractor Room Night Goal.** Contractor shall work together with the CVB to meet or exceed the Joint CVB/Manager Room Night Goal for the

Center. At least 30 days prior to and no more than 30 days following the start of each Fiscal Year, the parties shall mutually agree upon the Joint CVB/Contractor Room Night Goal for the Fiscal Year. **(Up to 20 Points)**

- iii. **Event Day Goals.** Contractor shall work to increase the number of days the Arena and Convention Center is utilized. At least thirty (30) days prior to and no more than thirty (30) days following the start of each Fiscal Year, the parties shall mutually agree upon the Event Day Goals for the Arena and Convention/Trade Shows for the Fiscal Year. **(Up to 15 points)**
- iv. **Community Involvement.** Contractor will work with local and civic non-profit organizations within the locale of the American Bank Center regarding events and marketing. All fulltime management FTE will participate in one program or organization with in the community on a volunteer basis. **(Up to 15 points)**
- v. **Repairs and Maintenance Implementation.** Contractor shall demonstrate quality maintenance and operation of the American Bank Center based upon a review by the Contract Administrator on a quarterly basis of the condition of the American Bank Center and equipment therein. Contractor shall demonstrate compliance with the provision of this Agreement based upon an annual review of the quarterly walkthroughs by the Contract Administrator. **(Up to 20 points)**

(B) **Quantitative Fee.** Contractor shall be eligible to earn an incentive fee equal to 20% of the amount by which the Gross Revenue in each Operating Year exceeds the Gross Revenue Benchmark. For any Operating Years of less than a full 12-months, the Gross Revenue Benchmark shall be prorated based on the actual number of days elapsed in such Operating Year out of 365. If any Operating Years exceed a 12-month period, the Gross Revenue Benchmark shall be adjusted to account for such extra time by prorating such time that exceeds 12 months based on the number of actual additional days out of 365 and adding that prorated amount to the total Gross Revenue Benchmark. The Gross Revenue Benchmark shall be determined annually as part of the budget approval process. The Gross Revenue Benchmark and Gross Revenue shall include revenue from the Arena, the Convention Center, and the Auditorium. There shall be a cap or maximum limit on the amount of the Quantitative Fee in the amount of \$100,000 per year.

(C) The Incentive Fee earned by Contractor (both the Qualitative Fee and Quantitative Fee) shall be paid to Contractor no later than 90 days following the end of each Fiscal Year

9. Use of Facility at Direction of City.

(A) At the direction of the City Manager, upon reasonable advance notice and subject to availability, Contractor shall provide use of the Facility or any part thereof to civic, special interest groups and nonprofit organizations located in Corpus Christi area at reduced rates.

(B) Subject to the Policies and Guidelines established by Contractor and approved or modified by the City, the City shall not schedule use of the Facility pursuant to subsection

(A) or Section 9, below, if such use will conflict with paying events booked by Contractor and shall in all instances be subordinate thereto in terms of priority of use of the Facility.

10. Use of Facility by City.

(A) Subject to availability, the City shall have the right to use the Facility or any part thereof rent-free for meetings, seminars, training classes or other non-commercial uses, provided that the City shall promptly reimburse Contractor for any incremental out-of-pocket expenses incurred by Contractor (such as the cost of ushers, ticket-takers, set-up and take-down personnel, security expenses and other expenses) not included in the Approved Budget in connection with such use. Such non-commercial use of the Facility by the City shall

- i. not compete with or conflict with the dates previously booked by Contractor for paying events;
- ii. not consist of normally touring attractions (such as concerts and family shows); and
- iii. be booked in advance upon reasonable notice to Contractor pursuant to the Facility's Policies and Guidelines as approved or modified by the City. Upon request of the City, Contractor shall provide to the City a list of available dates for City's use of the Facility. To the extent that Contractor has an opportunity to book a revenue-producing event on a date which is otherwise reserved for use by the City, Contractor may propose alternative dates for the City's event, and the City shall use commercially reasonable efforts to reschedule its event to allow Operator to book the revenue-producing event.

(B) Subject to availability of unsold advertising space, the City may post advertisements at the Facility and in materials distributed at the Facility at no cost to the City. The City shall reimburse the Contractor for any production costs if applicable.

- 11. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Esther Velazquez
City Manager's Office
361-826-3093
EstherV@cctexas.com

- 12. Insurance.** Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City and American Bank must be

named as additional insureds. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

- 13. Inspection and Acceptance.** Contractor agrees to use best efforts to repair any Services that are provided that are not in accordance with the terms of this Agreement. Contractor agrees to maintain the Facility and all of its equipment and fixtures in their current condition as of the date of this Agreement except for normal wear and tear. During the term of this Agreement and any Option Periods, Contractor agrees to replace any broken equipment with equipment of comparable quality.
- 14. Financial Statements.** At the City's request, Contractor shall provide the City with the opportunity to review certain financial statements of Contractor. In connection with such financial statement review, Contractor shall represent and warrant to the City that (i) such Financial Statements were prepared in accordance with generally accepted accounting principles consistently applied and are true and correct in all material respects and present fairly the Contractor's financial position as of the date thereof; and that (ii) to the best of Contractor's knowledge there has been no material adverse change in Contractor's financial position from that reflected in the Financial Statements.
- 15. Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
- 16. Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee or agent of the City.
- 17. Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. Before beginning any work, subcontractors must provide proof of insurance that complies with Attachment C. The certificate of insurance must name the City and American Bank as additional insureds. All subcontracts must include the indemnification provision found in Section 27 of this Agreement.
- 18. Contracts.**

 - (A) The Contractor shall have no authority, without the prior written consent of the City, to enter into any contract for the provision of goods and services to the Facility at any time beyond the date for the expiration of the term of this Agreement or any then-current

Option Period. Contractor shall have the right to enter into, execute, and deliver contracts with users of the Facility which extend beyond or relate to dates falling after the expiration of the term of this Agreement or any then-current Option Period, subject to the written approval thereof by the City.

(B) City approval is required for all contracts with Major Users. Major Users include any professional sports team, franchise, or university using the Facility as the site of its home games, as well as any event held at the Facility whose use thereof consists of more than ten days during any fiscal year and any entity with which the Contractor has a multi-year or annual agreement for use of the Facility. Contractor must timely negotiate agreements with the Major Users at the Facility, described in Attachment A. In particular, the Contractor must, within 30 days after executing this Agreement, enter into an agreement with Texas A&M University – Corpus Christi (“TAMU-CC”) assuming all responsibilities and obligations as the operator of the Facility pursuant to the terms and conditions of TAMU-CC’s current license agreement for use of the Facility.

(C) All contracts entered into by Contractor requiring the consent of the City under this Agreement shall contain an express provision acknowledging that the same is subject to the City's approval. All contracts entered into by Contractor shall provide that the same are assignable to the City and, notwithstanding any contrary provision hereof, upon termination or expiration of this Agreement for any reason, Contractor shall assign to the City and the City shall assume in writing, all then outstanding contracts affecting the Facility entered into by Contractor in accordance with the authority granted Contractor hereunder; provided, however, the City shall not be obligated to assume any contracts or agreements entered into by Contractor in violation of this Agreement. Furthermore, notwithstanding the foregoing, the City shall not assume and shall not have responsibility for any acts or omissions of Contractor with regard to such contracts or agreements prior to the termination of this Agreement except as a consequence to the City's failure to provide funds under this Agreement.

19. **Amendments.** This Agreement may be amended or modified only by written amendment signed by both parties.
20. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same or any other term or condition of this Agreement.
21. **Compliance with the Law.** The Contractor shall comply with all applicable laws, rules, regulations, and ordinances relating to the use and operation of the Facility and the employment of its employees. The Contractor shall perform its obligations hereunder in good faith and in conformity with the standard to which a good operator would operate in similar circumstances. The Contractor shall require that all persons using the Facility or attending events therein comply with all legal requirements of all governmental authorities having jurisdiction.
22. **Duty of Contractor.** The Contractor shall owe to the City a duty to perform its obligations under this Agreement and to conduct the management and operating of the Facility at all

times with integrity and good faith and in a manner which is in the best interests of the Facility and the City and consistent with the terms of this Agreement, including any guidelines or instructions in Attachment A.

- 23. Funding Limitations.** The City recognizes and agrees that performance by Contractor of its responsibilities under this Agreement is subject to the City's provision of funds to Contractor as provided in Attachment A and is limited by the City's budget.
- 24. Operating Funds and Accounts.** The City shall maintain operating accounts to be used for the operation and management of the Facility. The Contractor shall deposit all revenues into the operating accounts and use the funds in those accounts for the expenses related to the management of the Facility. The City shall deposit any funds provided in the annual budget into the accounts for use at the Facility. Any balance in the accounts shall be retained in reserves and used for payment of future operating expenses.

25. Taxes and Permits.

(A) The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other required taxes. Upon request, the City Manager shall be provided proof of payment of any taxes related to this Agreement within 15 days of such request.

(B) The Contractor must obtain all permits or licenses necessary for the management of the Facility, including any permits or licenses related to the sale or distribution of alcoholic beverages at the Facility. When necessary, the City will assist the Contractor in obtaining such permits. The Arena and Auditorium have each been designated as a Public Entertainment Facility by the Texas Alcoholic Beverage Commission. The City will assist the Operator in maintaining such designation if necessary.

- 26. Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Esther Velazquez
Assistant to the City Manager
1201 Leopard St. Corpus Christi, Texas 78401
361-826-3093

IF TO CONTRACTOR:

SMG
Attn: Doug Thornton
Title: Executive Vice President, Stadiums and Arenas
Address: PO Box 52439, New Orleans, LA 70152
Phone: 504.587.3827

27. Indemnification. *Contractor, its officers, agents, and employees (“Indemnitor”) shall indemnify and hold the City of Corpus Christi, its officers, agents, employees, and representatives (“Indemnitees”) harmless and defend the Indemnitees from and against any and all liability, loss, claims, demands, suits, and causes of action of any nature whatsoever on account of personal injuries (including death and Workers’ Compensation claims), property loss or damage, or any other kind of injury, loss, or damage, including all expenses of litigation, court costs, attorney’s fees, and expert witness fees which arise or are claimed to arise out of or in connection with this Agreement or the performance of this Agreement, regardless of whether the injuries, death, or damages, are caused or are claimed to be caused by the concurrent or contributory negligence of Indemnitees, but not if by the sole negligence of Indemnitees unmixed with the fault of any other person. Indemnitor must, at its own expense, investigate all claims and demands, attend to the settlement or other disposition of such claims, defend all actions based thereon with counsel satisfactory to the City Attorney, and pay all charges of attorneys and all other costs and expenses of any kind arising from any said liability, damage, loss, claims, demands, suits, or actions. The indemnification obligations of the Indemnitor under this section shall survive the expiration or earlier termination of this Agreement. This indemnity specifically includes any claims brought related to the sale or service of alcoholic beverages.*

CITY DOES NOT AGREE TO DEFEND, NOR INDEMNIFY, NOR HOLD HARMLESS, CONTRACTOR UNDER ANY CIRCUMSTANCES.

28. Termination.

(A) The City Manager may terminate this Agreement for Contractor’s failure to perform the work specified in this Agreement or for failure to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) The City Manager may terminate this Agreement for convenience upon 60 days’ advance written notice to the Contractor.

(C) If the City elects to terminate funding for the operation and maintenance of the Facility, the City shall have the right to terminate this Agreement upon written notice to Contractor, such termination to be effective 60 days after such election to terminate. In such event, the

City shall pay the Contractor all fees and other sums due hereunder through and including the date of termination, otherwise such termination by the City shall be without penalty or liability.

(D) If the City's annual budget or other budget process results in a reduction of the funds available to be paid to Contractor hereunder, Contractor shall have the right to either accept such reduced funding or to terminate this Agreement by written notice to the City within 60 days following Contractor's notice of the reduction in funding.

29. **Surrender of Improvements.** Upon expiration or termination of this Agreement, Contractor shall promptly surrender the Facility to the City, leaving to the City all equipment, supplies, manuals, books, records, and inventories that are the property of the City or that have been purchased from funds made available by the City, and Contractor hereby quitclaims, transfers, sells, assigns, and conveys to the City, without recourse, representation, or warranty, all right, title, and interest that Contractor may have to all improvements made to the Facility and all equipment, materials, supplies, inventories and all other property so purchased. All such items including equipment shall be returned in their original condition less only normal wear and tear. Contractor agrees to execute any and all documents necessary to evidence such transfer promptly upon request therefore by the City. Contractor shall also deliver all documents, records, and other work product generated by Contractor for the City during the term of this Agreement.
30. **Continuation of Performance.** In the event of termination of this Agreement, Contractor, at the City's option, shall continue to perform under the provisions of this Agreement for a reasonable time, not to exceed six months, as determined by the parties to enable the City to make arrangements for a successor as operator of the Facility.
31. **Assignment.** No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.
32. **Bond Financing.** Contractor acknowledges that the Facility is financed in large part with the proceeds of one or more series of City bonds ("Bonds") the interest on which is intended to be excluded from gross income for federal income tax purposes. In order to assist the City in preserving the tax-exempt nature of the Bonds, Contractor acknowledges and agrees as follows:
 - (A) In determining whether to grant or withhold any approval of a contract for which approval of the City is required under this Agreement, the City may consider the effect of such contract for federal tax purposes on the exclusion of interest on the Bonds for federal income tax purposes.
 - (B) Each of the following described contracts must be approved by bond counsel to the City before execution thereof by Contractor:

- i. Any contract relating to the Facility which grants a leasehold interest, term for years, or other real estate interest in the Facility (other than a revocable license), or grants a long term right to use the Facility on a basis different from that of the general public.
- ii. Any contract for the use of the Facility for shows, programs, conventions, and other events unless such contracts provide for use on a fixed fee basis (excluding the sale of merchandise or concessions in respect thereto which may be on a percentage of merchandise or concession revenues), determined on an event by event basis and where the right of the user to the Facility are those of a transient occupant rather than full legal possessory interest in the Facility as a lessee.

(C) Any contract for the provision of services related to the Facility must, to the extent applicable, comply with the provisions of Revenue Procedure 2017-13 and the interpretations thereof. If required by bond counsel to the City or counsel to the underwriters, Contractor agrees to make modifications to this Agreement so that the same is, in the opinion of such counsel, a qualified management contract for purposes of Revenue Procedure 2017-13 promulgated by the Internal Revenue Service. In the event such modifications shall materially increase Contractor's obligations hereunder or materially decrease Contractor's rights hereunder, then Contractor shall have the right to terminate this Agreement upon not less than 90 days prior written notice to the City which notice must be provided to the City within 10 business days after Contractor is requested by the City in writing to enter into an amendment or modification hereof pursuant to this paragraph. If Contractor timely exercises its right of termination under this paragraph, Contractor shall continue to perform its obligations hereunder through the date of termination and the City shall continue to pay Contractor therefor in accordance with this Agreement; upon termination, neither party shall have any obligations accruing thereafter hereunder.

(D) Any approval of a contract by the City required under this Section shall be given within 30 days following receipt by the City of a request for approval, failing which the City shall be deemed to have disapproved the same.

(E) City and the Contractor agree that, for federal income tax purposes, the Contractor will not treat the managed Facility as property owned by the Contractor.

33. Breach.

(A) Each of the following shall constitute breach under this Agreement:

- i. Failure to pay when due any amount required to be paid under this Agreement, if the failure continues for, in respect to any regularly scheduled payment due hereunder, ten days after notice has been given to the breaching party, or in respect to any payment due hereunder which is not a regularly scheduled payment, 30 days after notice has been given to the breaching party.

- ii. Failure to perform any other obligation under this Agreement (including Contractor's failure to meet the standards of performance stated in Attachment A), if the failure to perform is not cured within 30 days after notice has been given to the breaching party, except that if the breach cannot reasonably be cured within 30 days, a breach shall not be deemed to have occurred if the breaching party begins to cure the breach within the 30 day period and diligently and in good faith continues to pursue the cure of the breach and actually cures the same within 60 days following such notice.
- iii. Any representation or warranty of Contractor contained herein which shall be knowingly false or misleading in any material respect as of the date made or deemed to have been made.
- iv. The Contractor shall (A) admit in writing its inability to pay its debts as they become due or (B) file a petition in bankruptcy or for the reorganization or for the adoption of an arrangement under the Bankruptcy Code as now or in the future amended, or file a pleading asking for such relief, or have or suffer to be filed an involuntary petition in bankruptcy against it which is not contested and discharged within 60 days, or (C) make an assignment for the benefit of creditors, or (D) consent to an appointment of a trustee or receiver for all or a major portion of its property, or (E) be finally adjudicated bankrupt or insolvent under any federal or state law, or (F) suffer the entry of a court order, under any federal or state law, appointing a receiver or trustee for all or a major part of its property or ordering the winding up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order, if not consented to by it, shall not be vacated, denied, set aside or stayed within 60 days after the date of its entry, or (G) suffer the entry of a final judgment for the payment of money and the same shall not be discharged or a provision made for its discharge within 30 days from the date of entry thereof or an appeal or other appropriate proceeding for review thereof shall not be taken within said period and a stay of execution pending such appeal shall not be obtained, or (H) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property and such writ or warrant of attachment or similar process is not stayed or is not released within 45 days after its entry or levy or after any stay is vacated or set aside, or (I) suffer the placing of a judgment lien on its property and failure to cause such lien to be released and discharged within 45 days from the date such lien took effect.
- v. Contractor shall conceal, remove or permit to be concealed or removed, any part of its property with the intent to hinder, delay, or defraud its creditors or shall make any transfer of any of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or suffer or permit while insolvent any creditor to obtain a lien upon its property through legal proceedings, which lien is not vacated within 30 days from the date thereof.

- vi. Contractor shall create, assume, or suffer to exist any mortgage, lien, charge of security interest, or other encumbrance whatsoever relating to this Agreement or its rights and obligations under this Agreement, except any pledge or other encumbrance of the fees due Operator pursuant to this Agreement.

(B) Each party shall promptly notify the other of any acts or omissions believed to be a breach by the other under this Agreement. In order to be effective, a notice of breach must be timely given, must state that it is a notice of breach, and must specify in reasonable detail the acts or omissions alleged to constitute a breach of this Agreement. Notice of breach is considered timely if given to the other party within 30 days after the non-breaching party learned, or reasonably should have learned, about the breach.

(C) If breach occurs and is not waived in writing by the non-breaching party, then the non-breaching party shall have the following remedies which are not exclusive but cumulative in addition to any other remedies now or later allowed by law:

- i. The right to cure, at the breaching party's cost and expense, any breach;
- ii. The right to sue to collect any sums not paid when due;
- iii. The right to sue to collect damages suffered by the non-breaching party by reason of the occurrence of a willful breach other than breach in the payment of money;
or
- iv. The right to terminate this Agreement.

34. Right of Ingress and Egress. Contractor acknowledges that the City shall have the right to enter the Facility and grant to others the right of ingress and egress to and from the Facility for purpose of inspection thereof or the conduct of capital improvements and for other purposes. The City agrees to coordinate such entry with Contractor so as to minimize interference with scheduled activities at the Facility.

35. Intellectual Property Rights. Pursuant to the terms of this Agreement, the Contractor has agreed to advertise, promote activities, market and conduct public relations for the Facility. Contractor covenants and agrees, subject to the reasonable consent of the City, to develop all intellectual property rights required for the advertisement, promotional activities, marketing and public relations for the Facility. Any and all intellectual property rights including, without limitation, all names and logos for the Facility, shall be the sole and exclusive property of the City. Contractor hereby conveys to the City, without recourse, representation or warranty, any right, title and interest that Contractor may have in and to any such intellectual property rights, including, without limitation, all rights of common law, copyrights, rights of copyright renewal, trademarks and trademark rights, and Contractor agrees to execute any documentation reasonably required by the City to evidence such transfer. The City hereby grants Contractor a license during the term of this Agreement to use and to grant to others the right to use the intellectual property rights in connection with advertising, promotional activities, marketing and public relations for the Facility.

- 36. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
- 37. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
- A. This Agreement and its attachments
 - B. The solicitation document, including addenda (Exhibit 1)
 - C. The Contractor's response (Exhibit 2)
- 38. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement.
- 39. Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- 40. Force Majure.** Neither party shall be in default hereunder or liable to the other for failure to perform where such default or failure is the result of acts of God, war, or any other similar cause outside of the reasonable control of the party who asserts that default or failure to perform is excused under this Section; provided, that in no event shall the provisions of this Section extend to any default or failure to perform due to labor shortages or strikes or economic hardship. In the event of a delay in performance excused by the operation of this Section, such delay shall only be for the period which the party claiming the delay was actually delayed in the performance of its obligation by the event outside of its reasonable control.
- 41. Non-Competition.** During the term hereof, Contractor agrees that it shall not, directly or indirectly, own, manage or provide consulting or other management, marketing or promotions services, whether as a principal, partner, joint venturer, officer, director, member, employee, consultant, agent, independent contractor, or stockholder of any company or business engaged in operating, managing, marketing, promoting or providing consulting services with respect to, public assembly or other arena-type Facility located within a 100-mile radius of the Facility which competes with the Facility. The foregoing restriction and covenant shall not, however, (i) apply to facilities which are within the restricted area which Contractor is managing under a contract in effect as of the date hereof, such facilities being listed on an attachment hereto and made part hereof for all purposes, or (ii) be deemed breached by Contractor's participation as a promoter, sponsor, or co-promoter of events at any facilities if either (a) the same event has been scheduled to appear at the Facility within

12 months of its occurrence at such other Facility or (b) the same has not been scheduled to appear at the Facility because the participants (i.e., the promoter of the event in question or the principal performer of the event in question) in such event refuse or decline to appear at the Facility (upon request, Operator shall provide the City's Contract Administrator reasonable evidence thereof).

In addition to its rights to terminate this Agreement should Contractor breach the provisions of this section, the City may collect from the Contractor, as liquidated damages and not as a penalty (a) reimbursement of all actual costs incurred by the City to replace Contractor's management team plus (b) all fees paid to Contractor hereunder during the 12-month period immediately preceding such termination.

Contractor hereby stipulates and agrees that the foregoing restrictions on Contractor are reasonable in light of the services which Contractor will render hereunder both in terms of geography and duration. Contractor further agrees that the stipulated, liquidated damages set forth in the preceding paragraph hereof are reasonable due to the uncertainty to City of the amount of damages City will actually incur should Contractor breach such provisions, Contractor hereby stipulating and agreeing the City will actually incur damages in such event. The undersigned have executed this Agreement as of the date first set forth above.

- 42. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

[Signature Page to Follow]

CONTRACTOR

Signature: John F. B.

Printed Name: John F. Burns

Title: CFO

Date: 10/31/17

CITY OF CORPUS CHRISTI

Signature: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO LEGAL FORM

Assistant City Attorney Date

Attached and Incorporated by Reference:

Attachment A: Scope of Work and its Exhibits

Attachment B: Pricing Schedule

Attachment C: Insurance Requirements

Incorporated by Reference Only:

Exhibit 1: RFP No. 1222

Exhibit 2: Contractor's Proposal Response

Exhibit 3: Preaward Contract Commitments Dated October 16, 2017

Attachment A – Scope of Work

1.1 Background Information

- A. The American Bank Center (ABC) complex consists of three facilities; the 10,000 seat multipurpose arena, the 170,000 square foot Convention Center with a 76,500 square foot Exhibit Hall, and the 2,500 seat Selena Auditorium as shown on the attached facilities map A-1 and aerial map A-2. The Center also includes a series of parking lots that serve the facility as shown on the attached parking lot map A-3. The Convention Center and Selena Auditorium were originally built in 1979. These facilities completed a major expansion and renovation in November 2004 in conjunction with the opening of the Arena.
- B. Since its opening, the ABC complex has hosted a variety of events including concerts, performing arts events, sporting events, family shows, conventions, tradeshow, public shows, meetings, banquets/receptions and special events. The Arena currently hosts Texas A&M University – Corpus Christi's Men's and Women's Basketball teams, the North American Hockey League's Corpus Christi IceRays and the National Arena League's Corpus Christi Rage as tenant sports teams.
- C. It is the City's intention that the Facility be operated in a manner that is fiscally responsible with the objectives of offering diverse event activity (e.g., cultural, educational, entertainment, sporting, social and other activities) to area residents and visitors; attracting events (e.g., conventions and tradeshow) that generate economic and fiscal activity thereby stimulating the economy; minimizing financial operating requirements required from public funds; and, in general, maximizing the utilization of the Facility for the benefit of the City, while minimizing, to the extent practical, the net cost to the City.
- D. The Corpus Christi Convention and Visitors Bureau (CVB) plays an important role in the business bookings of the ABC complex as it is responsible for bookings going out 18 months in advance of the event. The CVB also tracks business statistics and reports on the economic impact of the ABC complex on a biennial basis.
- E. Demographic/Economic Data
 - o The ABC complex is located in the S.E.A. District on the Bayfront in Corpus Christi, Texas.
 - o Corpus Christi has a population of 324,074 and is the county seat of Nueces County.
 - o The Metropolitan Statistical Area (MSA) is primarily composed of Nueces, Aransas and San Patricio Counties.
 - o The MSA has an estimated population of 454,726. Growth has been relatively moderate over the past six years as the MSA has an estimated growth rate

of 6% from 2010 to 2016.

- o Approximately 62% of the population of the City of Corpus Christi and Nueces County is Hispanic or Latino.
- o The remaining population is made up of white (31%), Black/African American (4%) and other races (3%).
- o The median age for the City of Corpus Christi is 35.
- o The median household income for the City is \$51,255 and County is \$50,188. The unemployment rate as reported in December of 2016 was 5.4%.

F. Mission Statement

The mission of the American Bank Center is to serve as Corpus Christi's premier event center providing unprecedented guest experiences.

G. Mission Goals

- ✓ Operate the American Bank Center with the highest possible standards of customer service continually evaluating customer satisfaction and quality of service performance
- ✓ Provide economic benefits to Corpus Christi and maximize financial performance
- ✓ Maintain the American Bank Center complex in a fiscally responsible manner.

H. Critical City Issues

- ✓ Explore the possibility of acquiring/building a Convention Center hotel adjacent to the Convention Center.
- ✓ Approval for funding for capital improvements and equipment to keep the complex functional, fresh and attractive.

I. The Contractor will have complete control over the operations of the auditorium, convention center and arena (complex) and will align the operations of these facilities to the following priorities:

- 1) Provide consistent high quality customer service
- 2) Manage, market and maintain the complex in a fiscally responsible manner
- 3) Enhance usage/occupancy
- 4) Maximize financial performance
- 5) Streamline operations to improve efficiencies

J. Other relevant Background Data:

a. City Provided Services:

The City provides the following services for the facilities:

- o Water/Wastewater and Gas Services
- o Insurance for the Building Facilities.
- o IT services and support.
- o Kitchen Equipment – Kitchen equipment is available in the American Bank Center for use by the Contractor. There are two fully equipped kitchens available for use.

b. Available Funding from Corpus Christi Business and Job Development Corporation (Type A Board) for Arena

1. In November 2000 voters approved the adoption of a sales and use tax at the rate of one-eighth of one percent to be maintained in a separate fund, used only for the promotion, maintenance and operating costs of the Arena. This sales and use tax will be collected until 2025. The beginning fund balance is projected to be \$20,000,000 for fiscal year 2018.

2. Arena Marketing/Co-Promotion

Each year \$600,000 in marketing/co-promotion funds are made available. The City Manager has the authority to approve \$200,000 and use of the other \$400,000 must be approved by the Type A Board. To qualify for funds the following must be considered:

- The group considered for funding must hold an event and catering functions at the Arena.
- The event must cause a significant or positive economic impact in Corpus Christi.
- The level of support approved will take into account type of business: new, repeat, weekend, holiday, future meeting potential, etc.
- Any unpaid invoice balance for the related service (difference between Marketing/Co-Promotion Fund contribution and vendor's total bill) is the responsibility of the client.
- Both parties of this agreement must endorse approval of an event's application for the Marketing/Co-Promotion Fund for the funds to be dedicated.

3. Arena Maintenance and Operating Costs

Each year \$200,000 is made available for Arena maintenance. During the annual budget process the Contractor will conduct an assessment of the Arena and make recommendations for improvements. Contractor will submit the recommendations in the form of a projects list. If approved by City management, funding for the projects will be included in the American Bank Center's proposed budget for approval

by the Type A Board and City Council. In fiscal year 2017 \$1,500,000 was made available for maintenance and capital improvements to the Arena. Contractor shall utilize sound business practices to choose subcontractors to complete the work in a quality manner for a fair and reasonable price.

c. Available Funding from Hotel Occupancy Tax (HOT) Funds for Convention Center

Each year \$250,000 is made available for Convention Center (includes Selena Auditorium) maintenance. During the annual budget process the Contractor will conduct an assessment of the Convention Center and make recommendations for improvements. Contractor will submit the recommendations in the form of a projects list. If approved by City management, funding for the projects will be included in the American Bank Center's proposed budget for approval by City Council. In fiscal year 2017 \$3,855,000 in HOT funds were made available for capital improvements to the Convention Center. Contractor shall utilize sound business practices to choose subcontractors to complete the work in a quality manner for a fair and reasonable price.

d. Funding Chart – see attached funding chart A-4 for a summary of funds reflecting what was outlined above.

e. Contractor Provided Services:

In addition to the management services the Contractor provides the following services for the facilities:

1. Utilities/Waste Removal and Grounds Keeping:

- o Electric Service – current provider is Gexa at a rate of \$.07485/kwh or an estimated cost of \$1,136,430/year.
- o Waste Service/Removal - current provider is Republic Services and costs are approximately \$30,000/year for the Convention Center and approximately \$29,000/year for the Arena.
- o Landscape Maintenance Service – current provider Aspen Lawn at an estimated cost of \$24,000/year.
- o Computer Leases – current provider City of Corpus Christi at an estimated cost of \$15,000/year.
- o Telephone Service – current provider City of Corpus Christi at an estimated cost of \$61,000/year.
- o Elevator Maintenance – current provider City of Corpus Christi at an estimated cost of \$37,000/year.

2. Event cleaning costs per facility:

Housekeeping responsibilities in the convention center include all

conversions, housekeeping support during the event, post-event strike and housekeeping to return the area to original condition. These costs will vary dramatically based on the size, scope and theme of the event. A small wedding reception for 75 guests will require substantially less set-up, event coverage and post-event strike and clean-up than a large 7,500-attendee convention.

Housekeeping responsibilities in the Selena Auditorium and the arena are essentially limited to housekeeping-related responsibilities, but costs vary greatly in these venues as well. A lightly-attended "No Food or Drink" performance in the arena or Selena Auditorium will require much lower housekeeping staffing costs than a sold-out event with full concessions.

The figures below reflect average event set-up, post-event strike and housekeeping costs ranging from low to high, by venue:

Convention Center - \$50 to \$2,500 (includes conversion and strikes)

Selena Auditorium - \$150 to \$600

Arena - \$400 to \$2,800

3. Non Event Cleaning Costs per Facility:

The full-time facility housekeeping staff's annual combined wages are \$111,000. These cleaning wages include conversion (set and strike) responsibilities in the convention center.

4. Signage, sponsorships, naming rights:

The Contractor for the ABC Complex manages the naming rights and venue sponsors for the venue. The naming rights for the venue, American Bank, are based upon a ten year agreement in which includes a Luxury Suite and Personal Seat Licenses. That agreement started December 1, 2014 and will continue until November 30, 2024. This Agreement will be assigned to the Contractor. The current provider of Management Services for the ABC Complex also maintains and implements various venue sponsorships including one year, three year, and five year agreements. These sponsorships contain temporary and permanent signage throughout the American Bank Center as well as other VIP amenities. Based upon their level of commitment, VIP amenities can include access to the VIP Lounge, free VIP parking, name plaques on seats, meet and greets, special food and beverage offers and private use of the complex.

5. Premium Seating/Suite Level Seats:

Currently, there are eleven Luxury Suites on the second level of the north side of the building. Below the eleven Suites are sections 114, 115 and 116 in which is where the Premium Seating is located.

The Premium Seating otherwise known as the VIP Club or Personal Seat Licenses (PSL's). Luxury Suites are leased out on three or five year terms. Depending on the Suite tenants budget Suite agreements can include sponsorship collateral (permanent and temporary) throughout the complex, Premium Seating outside the Suite, season tickets, free parking, onsite promotions and third party tie-in's with public events. A Luxury Suite starts at \$50,000 per year with a minimum of a three year term. Personal Seat Licenses start at \$670 per seat if two PSL's are contracted. If three or more PSL's are contracted each seat is \$570 per year. The Director of Marketing and Corporate Sales is responsible for creating awareness, selling and maintaining the day-to-day needs of Luxury Suite and Club Seat clients.

6. Food and Beverage Services:

The Contractor will provide food and beverage services for events. Caterers can be in-house but will also include outside caterers that will go through a fair and open approval process conducted by the Contractor to participate.

f. Tenant contracts:

Contract periods are annual or multi-year, as mutually-agreed upon by the tenant and the ABC Complex Manager as follows:

Tenant Name	Activity	Contract Period	Scope of Contract
Corpus Christi IceRays	NAHL Hockey	Multi-Year	27 regular season game dates in Arena
TAMU-Corpus Christi Islanders	Men's & Women's Collegiate Basketball	Multi-Year	21 regular season game dates in Arena
TAMU-Corpus Christi	Graduation Ceremonies	Multi-Year	3 per school year (August, December & May) in Arena
Corpus Christi Rage	National Arena League	Annual	5 regular season game dates in Arena
Hurricane Alley Roller Derby	Women's Flat Track Derby Association	Annual	6 regular season bout dates in Exhibit Hall
Buc Days Rodeo	Professional Rodeo Cowboys Association (PRCA)	Annual	4 performances in Arena

It is important to note that local high school graduations are held at the convention center complex each year. In addition, the City utilizes the building facilities for specific events. A calendar of events has been attached A-5 to this scope of work for reference.

The Contractor must execute agreements with the major tenants to continue their use of the American Bank Center. In particular the Agreement with Texas A&M University – Corpus Christi will be assigned.

1.2 Scope of Work

The Contractor will provide following minimum management requirements:

- A. Manage and operate the complex and contract for its use that will meet the stated goals. Furnish all services, personnel materials, tools, machinery, equipment and other items necessary to manage the facilities.
- B. Manage all aspects of the complex in accordance with an approved operations plan.
- C. Maintain the complex in a sound and operationally effective condition to ensure protection and preservation of the City's assets. Services include but are not limited to: routine repairs, preventative maintenance, janitorial services, grounds keeping services, maintenance of all interior and exterior walls of the facilities, maintenance of the landscaping around the facilities, walking inspections of the facilities on a daily basis, and maintenance of the parking lots to city codes and standards. Landscaping areas to be maintained will be as shown on the attached landscape maps A-.
- D. Manage the Food and Beverage Services, including alcoholic beverage services. The City is open to the Management Company offering food and beverage services through a subsidiary or division of the Management Company or through a third party independent subcontractor. The City will consider alternative arrangements for disallowing outside caterers to participate in the services, or minimizing outside catering services when the financial impact of doing so is determined to be in the City's best interest. However, the City retains sole discretion in making that determination. The sale of alcoholic beverages will be permitted and conducted in accordance with regulations established by the City and the Texas Alcoholic Beverage Commissions regulations.
- E. The Contractor shall conduct the Foodservices so that all persons at the facility shall have a reasonable opportunity to purchase the food products sold at all events held at the facility. It is understood and agreed by the Parties that it is not always feasible to operate all of the concession facilities for each and every event held at the facility, and Contractor shall have the right not to operate one or more of the Concession facilities at any Event held at the facility, as Operator reasonably determines to be appropriate for the efficient and cost-effective performance of the Foodservices. The Contractor shall use its reasonable best efforts to operate the concessions services so that all customers at the facility shall be promptly and satisfactorily served the food products sold by way of concessions. All food products sold by the Contractor in providing the Foodservices shall be of the highest standard of quality and purity, and shall be appropriately prepared and appropriately served. All food products and Foodservices shall conform to all requirements of

applicable federal, state, county, and municipal laws and ordinances.

- F. The Contractor shall at all times maintain the Foodservice premises in a neat, clean, and sanitary condition. Employees or subcontractors of the Contractor shall deposit trash and garbage resulting from the Foodservices into suitable containers provided by the Contractor for waste removal. The Contractor shall make all arrangements for the collection of waste products from the facility. The Contractor shall determine the level of staffing needed to maintain this standard. Appropriate staff, based on the number of attendees and the rooms and facilities being used, shall be on site for each event to ensure that this standard is maintained during and following the event.
- G. The Contractor shall be responsible for repairing and maintaining all Foodservice equipment, including cleaning supplies, used in the operation of the Foodservices as well as interior areas the Foodservice premises. The Contractor shall provide all uniforms for its employees.
- H. The Contractor shall provide sufficient managerial and customer service personnel to provide high quality Foodservices at the facility.
- I. The Contractor shall exercise good faith efforts in managing and operating the Foodservices at the facility so as to minimize operating expenses and to maximize gross receipts, while maintaining a level of service that is satisfactory to the City. The Contractor will advertise, promote activities, market, and conduct public relations for the Foodservices.
- J. Solicit and engage potential clients for the use of the complex, negotiate and execute contracts for the use and schedule events for the short term and long terms use.
- K. Market the sale of luxury suites, box seats and personal seat licenses.
- L. Market for advertising, licensing, promotional activities and public relations of the complex.
- M. Manage and cater special events at the request of the City.
- N. Establish and submit an annual budget(s) for the complex, approve and monitor all expenditures for proper accounting controls and expense reporting, consolidate and submit monthly reports to City management to provide for overall responsible fiscal management of the operations of the complex.
- O. Hire and train the complex staff required to effectively manage the operations to include managers, supervisors and front line employees that will promote the City's mission of excellent customer service.
- P. Project revenues generated from the complex for each budget year, monitor performance and tweak or adjust strategies in an effort meet or exceed projections.
- Q. Develop policies and procedures that will contribute to the highest

operational efficiencies of the complex.

- R. Solicit and contract for the naming rights of the complex as these rights become available for others to bid on.
- S. Implement energy and conservation measures in order to reduce costs associated with the operation of the complex.
- T. Establish policies and contract for events that will enhance tourism and economic activity in the Downtown area.
- U. Partner with the Convention and Visitors Bureau (CVB) to market the complex and enhance its use. Develop a marketing plan and brochure, a booking policy, and a complimentary sales responsibilities plan with the CVB and begin implementation thereof as soon thereafter as it is approved by the City.
- V. Manage the current Naming Rights Agreement between Operator and American Bank, and seek, negotiate and enter into contracts with future naming rights partners subject to the terms of this Agreement, for the naming rights of the Facility, and maximize additional naming rights revenue at the Facility to the extent not under the scope of the current Naming Rights Agreement to the maximum extent possible, not in conflict with the current Naming Rights Agreement. If necessary, Operator shall enter into an agreement with American Bank within sixty (60) days after the execution of this agreement to assume any obligations under the current Naming Rights Agreement, pursuant to the terms and conditions of such Naming Rights Agreement.

1.3 Budget

- A. General - The Contractor will prepare a budget each year, with the exception of the first year already in progress. The budget will align with the City's fiscal year which runs from October 1st through September 30th. Approximately 140 days before the beginning of the fiscal year, the Contractor will submit the draft budget to the Contract Administrator for review and approval. Separate budgets will be due for the Convention Center and the Arena. The budget for the first year of the contract is attached A-7. Please note that this budget is for an entire year, part of which will have been expended when the new Agreement begins.
- B. Monthly Reports – report monthly by the 1st of the month status of the budget for the preceding month. These reports shall be submitted to the Contract Administrator. This report will include a summary, see attached Monthly Report Budget Summary sample A-8 and detailed backup of each cost item.
- C. Operating Expenses – includes all obligations in promoting, maintaining, marketing and managing the facilities. These expenses are typical of what would be included in the annual budget request:
 - Salaries, wages and benefits expense

- Costs of food service
- Event services expenses
- Equipment rental expenses
- Repairs and maintenance expenses
- Advertising, marketing and public relations expenses
- Parking expenses
- Costs of merchandise
- Management and incentive fees
- Cleaning expenses
- Data processing expenses
- Dues, subscriptions and memberships expenses
- Printing and stationery expenses
- Postage and freight expenses
- Security expenses
- Professional fees
- Telecommunications charges
- Utility expenses
- Insurance expenses
- Taxes
- Training costs
- Employee uniforms expenses
- Credit card fees
- Garbage removal expenses
- Common-Area-Maintenance expenses
- Pest control expenses
- Permitting expenses
- Talent costs (if Center is producing show)
- Other operating expenses

D. Operating Revenues – includes any and all revenues received through the operation, management or promotion of the facilities to include but not be limited to:

- license, lease and concession fees and rentals,
- revenues from merchandise sales,
- revenues from advertising and sponsorship sales and renewals (including without limitation revenues from the sale of naming rights),
- event sponsorship revenues,
- equipment rentals,
- utility revenues,

- box office revenues,
- ticket surcharges,
- ticket service fees,
- parking revenues,
- food service and concession revenues (however, if such revenues are collected in the first instance by and retained by the concessionaire, the amount of such revenues owed by the concessionaire to the Center shall be included as Operating Revenues),
- commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, the amount of such revenues owed by such contractors to the Center shall be included as Operating Revenues),
- miscellaneous operating revenues,
- revenues generated from separate agreements with SMG Affiliates pertaining to the Center, and
- interest revenues

- E. Budget Approval - The City will promptly review all proposed Budgets and promptly communicate to the Contractor any comments or suggested revisions thereto. The City shall, in any event, complete its Budget review and deliver its comments in accordance with the City's budget calendar. Final approval of any Budget shall, be completed in accordance with procedures applicable to the general City budget which is to be adopted by the end of each immediately preceding Fiscal Year. In the event a proposed Budget has not been approved in a manner which permits its incorporation into the general City budget for approval on or before the end of each immediately preceding Fiscal Year, the Budget for the previous period shall continue to control. Each Budget shall be considered approved only upon written approval thereof by the City. Each Budget, once approved in writing by the City, and each capital Budget, once approved in writing by the City, shall constitute an "Approved Budget." Operator shall operate and manage the Facility in accordance with the Approved Budget and in no event (other than in connection with an Emergency Expenditure) may Operator incur costs or expenses in excess of the amounts budgeted. Operator recognizes that approval of the Budgets shall be made or withheld by the City in the City's sole and absolute discretion.
- F. Stipend for Convention Center Management - The City will provide an annual stipend for the management of Convention Center in the amount not to exceed \$1,500,000. This is the maximum contribution the City will make to operate this facility. A shared goal moving forward is to reduce this

stipend as much as possible in future fiscal years.

- G. Procurement – purchasing of goods and services shall be conducted in a manner that assures the City that the funds are being spent prudently and in accordance with generally accepted purchasing policies as governed by the State of Texas Local Government Code. Any goods or services purchased over \$50,000 shall be done so in a competitive market and results of this process shall be submitted to the Contract Administrator for concurrence that a competitive process was followed. Purchases under \$50,000 will still be conducted using sound purchasing procedures such as soliciting informal quotes from multiple providers and such processes will be subject to audit by the City. All purchases of furniture, fixtures and equipment and all capital improvements by the Contractor shall be made in the name of the City. The Contractor shall establish an inventory control system to account for these purchases. An inventory list shall be provided with the monthly budget report.

1.4 Operation Plan

The Contractor will provide within the first sixty days of operation and then annually thereafter an operating plan. This plan will outline the Contractor's plan to manage and operate the facility. The Contractor shall devise and implement procedures including preventive and predictive maintenance to keep the facilities in good order and condition. The plan will outline at a minimum, facilities operations and maintenance, marketing plans, food service/catering plans, procurement plans, inventory tracking system plan, budgeting process.

1.5 Work Site and Conditions

The work shall be performed at the American Bank Center Complex located at 1901 N. Shoreline Blvd., Corpus Christi, Texas 78401.

1.6 Performance Measures

A key component of the management services is optimal tracking of performance and disseminating results in a timely manner.

- A. The primary purpose of a convention center is to generate economic benefit by attracting new visitors. Visitor spending generates tax revenues and jobs in the local economy. Convention centers also serve as the "living room of the community" providing a gathering place for entertainment and civic events. Convention centers do not typically generate operating profits. Rather, convention centers are a loss leader. They provide tourism infrastructure that benefits the larger hospitality and tourism industries.
- B. The goal for the Contractor for the American Bank Center is to ensure that both locals and visitors who use the American Bank Center are provided with a distinctive level of service excellence while maintaining a fiscally responsible operation that contributes economic benefits to Corpus Christi. Performance measures must be established to properly evaluate the city's return on investment. Below is a set of goals, objectives and performance

measures that create a foundation for establishing these proposed performance measures with the company selected to manage the American Bank Center.

C. GOALS

1. To operate with the highest possible standards of customer service continually evaluating customer satisfaction and quality of service performance.
2. To provide economic benefits to Corpus Christi and maximize financial performance.
3. To maintain the American Bank Center complex in a fiscally responsible manner.

D. OBJECTIVES

1. Customer Service
 - Promote service vision to staff and clients: "By doing ordinary things in an extraordinary manner, we will earn the privilege of serving our customers again."
 - Consistently deliver a quality event experience tailored to the satisfaction of every customer.
 - Provide staff with necessary information, resources, and ongoing training to facilitate the effective and efficient achievement of quality service performance goals.
 - Hire to assure the right person is in the right job and to enhance service capability.
2. Economic Benefits and Maximize Financial Performance
 - Generate sales tax dollars.
 - Attract out-of-state or out-of-area attendees to events at the Center, where they will spend their money on lodging, food, and retail establishments, providing state and local tax revenues, jobs for workers in the hospitality and retail industries, and profits for local businesses.
 - Provide leadership to the destination sales effort.
 - Schedule strategy meetings and training events with the Corpus Christi Convention and Visitors Bureau and with hotel sales and services teams.
 - Plan site visits for third-party planners and association site committees to attract future business to this region.
 - Increase the number of events booked in the arena vs. prior year.
 - Increase the number of event days vs. prior year.
 - Increase the attendance vs. the prior year.
 - Provide regularly scheduled updates on financials to city staff.

3. Maintain the complex in a fiscally responsible manner
 - Protect the city's ongoing investment through a high level of maintenance and repair and overall operational standards to be implemented throughout the life of the agreement.
 - Manage and be responsible for all aspects of the facility's day-to-day operation including repairs and maintenance, facility cleaning, improvements to the physical plant, exterior maintenance, landscaping, maintenance of sidewalks, driveways and parking areas as well as the purchasing of all required services including the hiring, coordination and oversight of contractors, vendors and suppliers.
 - Provide, manage and complete an annual Capital Improvement Plan.

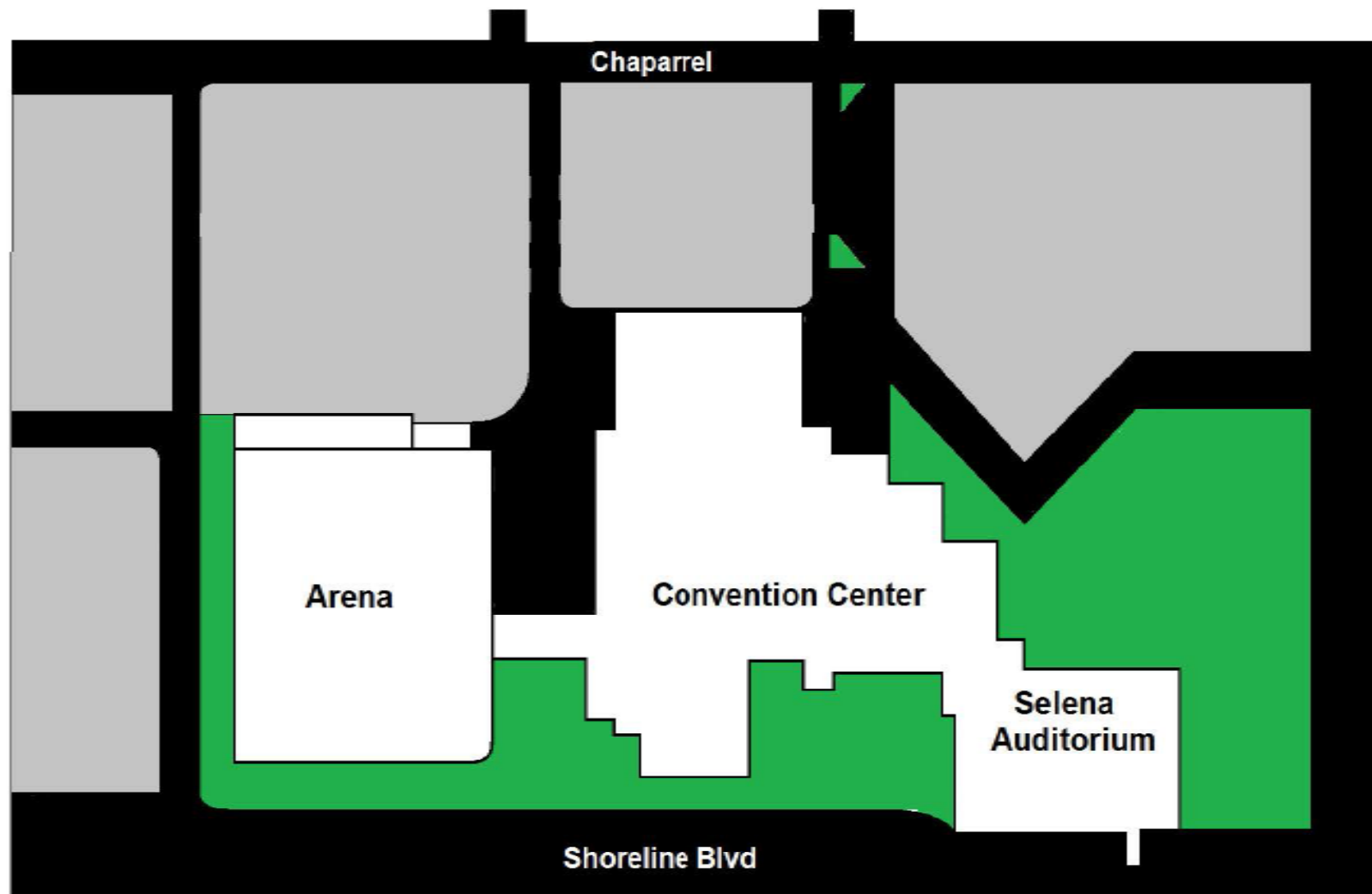
E. INCENTIVE FEE

The Contractor shall be entitled to receive an incentive fee each full or partial operating year of the contract term. The incentive fee shall be comprised of both a qualitative based fee ("Qualitative Fee") and a quantitative fee ("Quantitative Fee"), as described in the Service Agreement.

F. PERFORMANCE MEASURES CHART

See attached Performance Measures chart A-9 which demonstrates the type of score card that will be used to measure the performance levels for incentive payments.

A-1 – FACILITIES MAP



A-2 – AERIAL MAP



A-3 – PARKING LOT MAP



A-4 – FUNDING CHART

FY17 FUNDS PROVIDED TO OPERATOR IN AMERICAN BANK CENTER BUDGET					
Amount	Description	Source			
200,000	Arena Maintenance	Arena Facility Fund (Type A) 1130			
600,000	Arena Marketing & Co-Promotion	Arena Facility Fund (Type A) 1130			
1,500,000	Arena Capital (varies depending on amount approved)	Arena Facility Fund (Type A) 1130			
551,737	Internal City Expenses (see Itemization)	Arena Facility Fund (Type A) 1130			
250,000	Convention Center Maintenance	HOT Fund 1030			
3,855,511	Convention Center Capital (varies depending on amount available & approved)	HOT Fund 1030			
1,500,000	Convention Center Shortage	HOT Fund 1030			
113,553	Admin Services Fee	HOT Fund 1030			
184,066	Debt Service	HOT Fund 1030			
557,670	Internal City Expenses (see Itemization)	HOT Fund 1030			
9,312,537	Total				
			FROM ARENA (1130)		
			Account	Description	
			530000	Professional services	130,500
			537090	Flood Insurance	22,325
			537095	Windstorm Insurance	123,776
			537420	Property Insurance	
			548060	MIS Alloc	275,136
				SUBTOTAL	551,737
			FROM HOT (1030)		
			Account	Description	
			530000	Professional services	130,500
			537090	Flood Insurance	18,266
			537095	Windstorm Insurance	101,272
			537420	Property Insurance	
			548060	MIS Alloc	279,708
			548010	Fleet	27,924
				SUBTOTAL	557,670

A-5 – CALENDAR OF EVENTS

Month-Year Event

- Jul-17 Big Bang Celebration
- Firefighter II EMS Exam
- Wedding
- Texas FFA Convention
- Hijas de su Madre
- Roller Derby
- Dancing with the Stars
- Wedding Fair
- TXTA Texas Challenge
- City of CC Pre-Proposal
- Discover the Dinosaurs
- Fire Entrance Exam
- HEB Bakery
- Family & Friends Caregiver
- Wedding
- In Honor of Blue Jay & Vivian, Come Fly with Us
- Battle on the Bay
- Aug-17 TMRS Regional Conference
- TAMUCC Commencement
- TAMUCC Student Athlete
- Jehovah's Witnesses Conference
- Big Daddy Weave
- Texas Trophy Hunters Show
- A Night in Vegas
- Sep-17 International Cat Show
- Moody High School 50 Year Anniversary
- Roller Derby
- Home and Garden Show
- Wedding
- Grandparents and other Relatives Raising Children
- Street Safety Meeting
- King HS Homecoming
- County Judges Convention
- Best of the Best
- Kansas - Concert
- Fire Truck Pull
- Oct-17 Luther Jones Summit
- Women Leading Government
- Carroll HS Homecoming
- Roller Derby
- South Tx Mini Conterence

A-5 – CALENDAR OF EVENTS

	TCOLE Training Corrdinator
	Gregory Portland Homecoming
	Wedding
	Comedy
	State of the District
	TPTA Texas Physical Therapy Assoc
	Ray HS Homecoming
Nov-17	Duck's Unlimited
	Paw Patrol
	Comedy
	Wedding
	Wedding
	Wedding
	Quiceanera
	Nutcracker Ballet
	TYFA
	Sweet 16 Social
Dec-17	Performance (not-announced)
	Concert (not-announced)
	Nutcracker Ballet
	Del Mar Graduation
	TAMUCC Commencement
	Feast of Sharing
	Street Safety Meeting
	Christus Physicians Group
	RSVP Holiday Party
	Disney Live
Jan-18	NAACP Freedom Fund Banquet
	Hector P. Garcia Memorial
	Entertainment (not-announced)
Feb-18	SCS Mardi Gras Party
	Home and Garden Show
	PATC Seminar
	BPA Convention
	Event (not-announced)
	Fullness of Truth
Mar-18	BPA Convention
	Broadway Show
	Texas Water Utilities Annual
	CCA
	Concert Ballet
Apr-18	Texas Skills

A-5 – CALENDAR OF EVENTS

	London HS Prom
	Fusion National Dance Co
	Fiesta De La Flor
	CC Ballet Spring Performance
May-18	Del Mar Graduation
	TAMUCC Commencement
	SEA Banquet
	Tuloso Midway Graduation
	Calallen Graduation
	Ray, Veteran, Carroll HS Graduations
	Gregory Portland Graduation
	London ISD Awards and Graduations
	CCISD Graduations
Jun-18	Flour Bluff Graduation
	CCISD Graduations
	UMC-United Methodist
	TAPT Convention
	Convention (not-announced)
	Wedding
	TASBO
Jul-18	TXTA Texas Challenge
	SXSW Head Start and Early Start
	Wedding Fair
	Battle on the Bay
	Wedding
Aug-18	Pan American Golf Assoc
	Wedding
	Texas Trophy Hunters Show
	Jehovah's Witnesses Conference
	Health Fair
	Del Mar Graduation
	Convention (not-announced)
	Edspiration

The map shows a grid of streets including US-181, Mesquite, Chaparral, and Water Street. A legend indicates that blue areas are 'City-Maintained' and yellow areas are 'Contractor-Maintained'. The Selena Center, located between Chaparral and Water Street, is highlighted in yellow. Other labeled areas include Lot 1 through Lot 24, Heritage Park, Arena, Convention Center, Science Museum, Selena Auditorium, and Plaza Culture Center. The Selena Auditorium is highlighted in blue, indicating it is City-Maintained.

A-7 – PROPOSED 2018 BUDGET

AMERICAN BANK CENTER

PROPOSED FY18 BUDGET

	<u>ARENA</u>	<u>CONVENTION CENTER</u>
<u>EVENT INCOME</u>		
<u>Direct Event Income</u>		
Rental Income	\$ 703,100	\$ 606,556
Services Income	13,105	172,058
Direct Service Expenses	(435,350)	(49,669)
Total Direct Event Income	280,855	728,945
<u>Ancillary Income</u>		
Food & Beverage	798,767	868,015
Novelty	44,770	13,300
Parking	202,800	219,933
Other Ancillary	442,707	152,065
Total Ancillary Income	1,489,044	1,253,313
Total Event Income	1,769,899	1,982,258
Other Operating Income	1,161,807	516,178
TOTAL REVENUES	2,931,706	2,498,436
<u>Indirect Expenses</u>		
Wages & Benefits	1,477,232	1,797,092
Event Labor Allocated	(485,000)	(300,000)
Contracted Services	-	8,000
General & Admin	165,900	252,350
Operations Expense	110,000	130,000
Repairs & Maint	180,000	225,000
Supplies	60,000	10,000
Insurance	45,000	60,000
Utilities	905,807	1,598,678
Food & Bev Indirect Exp	250,000	430,000
Total Indirect Expenses	2,708,939	4,211,120
NET INCOME (LOSS)	\$ 222,767	\$ (1,712,684)

A-8 – MONTHLY REPORT SUMMARY

AMERICAN BANK CENTER STATEMENT OF OPERATIONS

	<u>ARENA</u>			<u>CONVENTION CENTER</u>		
	Current Month Actual	Year-to Date Actual	Year-to Date Budget	Current Month Actual	Year-to Date Actual	Year-to Date Budget
<u>EVENT INCOME</u>						
<u>Direct Event Income</u>						
Rental Income	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Services Income	-	-	-	-	-	-
Direct Service Expenses	-	-	-	-	-	-
Total Direct Event Income	-	-	-	-	-	-
<u>Ancillary Income</u>						
Food & Beverage	-	-	-	-	-	-
Novelty	-	-	-	-	-	-
Parking	-	-	-	-	-	-
Other Ancillary	-	-	-	-	-	-
Other Event Income	-	-	-	-	-	-
Suite Ticket Sales	-	-	-	-	-	-
Ticket Rebates	-	-	-	-	-	-
Facility Fees	-	-	-	-	-	-
Total Ancillary Income	-	-	-	-	-	-
Total Event Income	-	-	-	-	-	-
Other Operating Income	-	-	-	-	-	-
TOTAL REVENUES	-	-	-	-	-	-
<u>Indirect Expenses</u>						
Wages & Benefits	-	-	-	-	-	-
Event Labor Allocated	-	-	-	-	-	-
Contracted Services	-	-	-	-	-	-
General & Admin	-	-	-	-	-	-
Operations Expense	-	-	-	-	-	-
Repairs & Maint	-	-	-	-	-	-
Supplies	-	-	-	-	-	-
Insurance	-	-	-	-	-	-
Utilities	-	-	-	-	-	-
Food & Bev Indirect Exp	-	-	-	-	-	-
Total Indirect Expenses	-	-	-	-	-	-
NET INCOME (LOSS)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

EXAMPLE

[illegible]

Attachment B – Schedule of Pricing

Fee Schedule



CITY OF CORPUS CHRISTI
Pricing Form
PURCHASING DIVISION

RFP No. 1222
American Bank Center Complex
Management Services

PAGE 1 OF 2

DATE: 8/7/2017

SMG

PROPOSER


AUTHORIZED SIGNATURE

1. Refer to "Instructions to Proposers" and Contract Terms and Conditions before completing proposal.
2. Provide your best price for each item.
3. In submitting this proposal, Proposer certifies that:
 - a. the prices in this proposal have been arrived at independently, without consultation, communication, or agreement with any other Proposer or competitor, for the purpose of restricting competition with regard to prices;
 - b. Proposer is an Equal Opportunity Employer; and the Disclosure of Interest information on file with City's purchasing office, pursuant to the Code of Ordinances, is current and true.
 - c. Proposer has incorporated any changes issue through Addenda to the RFP in this pricing.

ITEM	DESCRIPTION	TOTAL PRICE
1.0	Annual Fee to Manage the American Bank Center Complex Year 1 (February 1, 2018 – September 30, 2018)	\$63,333.33
2.0	Annual Fee to Manage the American Bank Center Complex Year 2 (October 1, 2018 – September 30, 2019)	\$95,000.00
3.0	Annual Fee to Manage the American Bank Center Complex Year 3 (October 1, 2019 – September 30, 2020)	\$96,900.00

ITEM	DESCRIPTION	TOTAL PRICE
4.0	Annual Fee to Manage the American Bank Center Complex Year 4 (October 1, 2020 – September 30, 2021)	\$98,838.00
5.0	Annual Fee to Manage the American Bank Center Complex Year 5 (October 1, 2021 – September 30, 2022)	\$100,814.76
6.0	Annual Fee to Manage the American Bank Center Complex Year 6 (October 1, 2022 – September 30, 2023)	\$102,831.06
TOTAL BASE YEARS		\$557,717.15

ITEM	DESCRIPTION	TOTAL PRICE
7.0	Annual Fee to Manage the American Bank Center Complex Optional Year 1 (October 1, 2023 – September 30, 2024)	\$104,887.68
8.0	Annual Fee to Manage the American Bank Center Complex Optional Year 2 (October 1, 2024 – September 30, 2025)	\$106,985.43
9.0	Annual Fee to Manage the American Bank Center Complex Optional Year 3 (October 1, 2025 – September 30, 2026)	\$109,125.14
TOTAL OPTIONAL YEARS		\$320,998.24
GRAND TOTAL ALL YEARS		\$878,715.39

Attachment B – Schedule of Pricing

NTE Contract Value Base Years

Type	Amount	Comment
BASE FEE	\$557,717.15	5 Yrs 8 Mos
QUALITATIVE FEE	\$300,000.00	MAX AT 50K/YR (Must be earned per terms of the Service Agreement)
QUANTITATIVE FEE	\$600,000.00	MAX AT 100K/YR (Must be earned per terms of the Service Agreement)
SUBTOTAL	\$1,457,717.15	NTE VALUE FOR FEES
MARKETING FUNDS	\$3,600,000.00	MAX AT 600K/YR
CONVENTION CENTER MAINTENANCE	\$1,500,000.00	MAX AT 250K/YR
ARENA MAINTENANCE	\$1,200,000.00	MAX AT 200K/YR
OVERRUN STIPEND	\$9,000,000.00	MAX AT 1.5M/YR FOR APPROX 7M ANNUAL BUDGET
SUBTOTAL	\$15,300,000.00	
CAPITAL CONTRIBUTIONS TYPE A/HOT	TBD	FUNDING AVAILABLE AS APPROVED FOR CAPITAL IMPROVEMENTS TO BLDGS
SUBTOTAL	\$16,757,717.15	
CONTRACTOR CONTRIBUTIONS	(\$200,000)	ONE TIME FUNDS AVAILABLE BY SMG TO OFFSET COSTS AT CITY'S DISCRETION
TOTAL NOT TO EXCEED VALUE	\$16,557,717.15	

Attachment B – Schedule of Pricing

NTE Contract Value Optional Years

Type	Amount	Comment
BASE FEE	\$320,998.24	3 Yrs
QUALITATIVE FEE	\$150,000.00	MAX AT 50K/YR (Must be earned per terms of the Service Agreement)
QUANTITATIVE FEE	\$300,000.00	MAX AT 100K/YR (Must be earned per terms of the Service Agreement)
SUBTOTAL	\$770,998.24	NTE VALUE FOR FEES
MARKETING FUNDS	\$1,800,000.00	MAX AT 600K/YR
CONVENTION CENTER MAINTENANCE	\$750,000.00	MAX AT 250K/YR
ARENA MAINTENANCE	\$600,000.00	MAX AT 200K/YR
OVERRUN STIPEND	\$4,500,000.00	MAX AT 1.5M/YR FOR APPROX 7M ANNUAL BUDGET
SUBTOTAL	\$7,650,000.00	
CAPITAL CONTRIBUTIONS TYPE A/HOT	TBD	FUNDING AVAILABLE AS APPROVED FOR CAPITAL IMPROVEMENTS TO BLDGS
SUBTOTAL	\$8,420,998.24	
CONTRACTOR CONTRIBUTIONS	\$0	
TOTAL NOT TO EXCEED VALUE BASE + OPTIONS	\$24,978,169.39	

Attachment C – Insurance Requirements

Insurance Requirements

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administrator one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City of Corpus Christi and American Bank, N.A. must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation **endorsement** is required on GL, AL and WC if applicable. **Endorsements** must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.	Bodily Injury and Property Damage Per occurrence - aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$5,000,000 Per Occurrence \$5,000,000 Aggregate
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit
WORKERS'S COMPENSATION (All States Endorsement if Company is not domiciled in Texas)	Statutory and complies with Part II of this Exhibit.
Employers Liability	\$500,000/\$500,000/\$500,000

EXCESS LIABILITY	\$9,000,000 Per Occurrence \$9,000,000 Aggregate
CRIME/EMPLOYEE DISHONESTY Contractor shall name the City of Corpus Christi, Texas as Loss Payee	\$1,000,000 Per Occurrence
LIQUOR LIABILITY	\$1,000,000 Combined Single Limit \$5,000,000 Aggregate
Operator and Any Subcontractors Are Responsible for All Damage to Their Own Equipment or Property.	

- C. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor'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.
- C. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

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

- List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

2017 Insurance Requirements

Purchasing

American Bank Center Complex Management Services

06/30/2017 sw Risk Management