

AN ORDINANCE 2012-06-21-0519

**AUTHORIZING THE EXECUTION OF THE FOURTH AMENDMENT AND SECOND RENEWAL AND EXTENSION OF THE MERCHANT BANKING SERVICES CONTRACT WITH BANK OF AMERICA, N.A. TO PROVIDE MERCHANT BANKING SERVICES TO THE CITY OF SAN ANTONIO UNDER THE SAME TERMS AND CONDITIONS FOR UP TO FOUR (4) ADDITIONAL TERMS OF ONE (1) MONTH EACH TO ALLOW FOR TRANSITION AND IMPLEMENTATION OF SERVICES TO A NEW PROVIDER.**

\* \* \* \*

**WHEREAS**, pursuant to Ordinance No. 2007-03-29-0307, passed and approved on March 29, 2007, the CITY's City Council authorized the execution of the Contract with CONTRACTOR to provide merchant banking services for an initial three (3) year term, with the option in CITY to renew for two (2) additional one-year terms under the same terms and conditions, subject to approval of CITY's City Council; and

**WHEREAS**, pursuant to Ordinance 2007-10-11-1088 passed and approved on October 11, 2007, CITY and CONTRACTOR entered into Amendment No. 1 to the Contract ("Amendment No. 1"), to provide for the use of Global Payments Inc. as an approved subcontractor for the processing of credit card transactions solely at the San Antonio International Airport Parking site location to incorporate the use of the Aviation Department's Revenue Control System software application; and

**WHEREAS**, pursuant to Ordinance No. 2009-06-25-0589, passed and approved June 25, 2009, CITY and CONTRACTOR entered into Amendment No. 2 to the Contract ("Amendment No. 2"), to increase the number of locations which require the ability to process credit card payments through Ticketmaster from one (1) to five (5); and

**WHEREAS**, pursuant to Ordinance No. 2010-06-03-0489, passed and approved June 3, 2010, CITY and CONTRACTOR entered into Amendment No. 3 to the Contract ("Amendment No. 3"), to further amend the Contract ("Third Amendment And Renewal And Extension") to: (a) provide for one (1) two-year renewal term rather than two (2) one-year renewal terms, and (b) provide for termination of Amendment No. 1 upon mutual agreement of the Parties; and as so amended, renew and extend the Contract for the two-year extension, to commence July 1, 2010, and terminate June 30, 2012; and

**WHEREAS**, the renewal term of the Contract expires on June 30, 2012; and

**WHEREAS**, City Staff has recommended that the Contract be amended to provide for up to four (4) additional extensions of one (1) month each upon the same terms and conditions set forth in the Contract and as so amended, to renew and extend the Contract for the first of the additional one (1) month extensions; and

**WHEREAS**, after due deliberations on and consideration of the matter, the City Council desires to accept the Staff recommendation and approve the amendment and the first one month renewal of the Agreement; **NOW THEREFORE:**

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

**SECTION 1.** The amendment of the Contract to provide for up to four (4) additional renewals of one (1) month each, upon the same terms and conditions, is hereby approved. The Contract is also hereby authorized to be extended for the first one-month period, from July 1, 2012 through July 31, 2012. The terms and conditions of the amendment and renewal of the Contract are hereby approved, and shall be substantially as set forth in that certain *Fourth Amendment And Second Renewal And Extension Of Merchant Banking Services Contract* ("Renewal"), a copy of which is attached hereto as **Attachment I** and made a part hereof for all purposes.

**SECTION 2.** The City Manager or the Chief Financial Officer or the Director of Finance is hereby authorized to execute the Renewal on behalf of the City of San Antonio, the terms of which shall be substantially as set forth in **Attachment I**.

**SECTION 3.** Funding associated with the costs of the Contract has been approved as part of the Fiscal Year 2012 Budget. There is no further fiscal impact associated with the Contract.

**SECTION 4.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

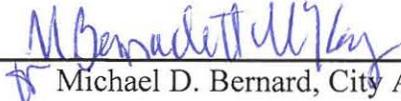
**PASSED and APPROVED** this 21<sup>st</sup> day of June, 2012.

  
M A Y O R  
Julián Castro

**ATTEST:**

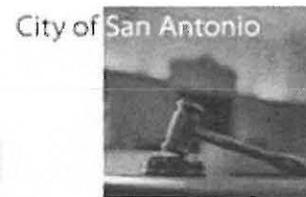
  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**



## Agenda Voting Results - 65A

<b>Name:</b>	5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25A, 25B, 26, 27, 28, 30, 31, 32A, 32B, 32C, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 49, 50, 51, 52, 53, 54, 56, 57, 58, 59, 60, 62, 63, 65A, 65B						
<b>Date:</b>	06/21/2012						
<b>Time:</b>	10:01:34 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the execution of the fourth amendment, second renewal and extension of the merchant banking services contract with Bank of America, N.A. to provide merchant banking services to the City of San Antonio under the same terms and conditions for up to four (4) additional terms of one (1) month each to allow for transition and implementation of services to a new provider .						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x			x	
Leticia Ozuna	District 3	x					
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

**A T T A C H M E N T I**

**FOURTH AMENDMENT  
AND  
SECOND RENEWAL AND EXTENSION  
OF  
MERCHANT BANKING SERVICES CONTRACT**

THE STATE OF TEXAS           §  
  §  
THE COUNTY OF BEXAR       §

This *Fourth Amendment And Second Renewal And Extension Of Merchant Banking Services Contract* (“Fourth Amendment And Second Renewal”) is made and entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as “City”), a Texas Home-Rule Municipal Corporation, acting by and through its City Manager, or its Chief Financial Officer, or their designees, pursuant to Ordinance No. 2012-06-\_\_ - \_\_\_\_, passed and approved on June \_\_, 2012, and pursuant to Article II, Section 2.1 of the *Merchant Banking Services Contract* approved pursuant to Ordinance No. 2007-03-29-0307, passed and approved on March 29, 2007 (hereinafter referred to as the “Contract”), and **BANK OF AMERICA, N.A.**, a national banking association (hereinafter referred to as “CONTRACTOR”), and is as follows:

**WHEREAS**, pursuant to Ordinance No. 2007-03-29-0307, passed and approved on March 29, 2007, the CITY’s City Council authorized the execution of the Contract with CONTRACTOR to provide merchant banking services for an initial three (3) year term, with the option in CITY to renew for two (2) additional one-year terms under the same terms and conditions, subject to approval of CITY’s City Council; and

**WHEREAS**, pursuant to Ordinance 2007-10-11-1088 passed and approved on October 11, 2007, CITY and CONTRACTOR entered into Amendment No. 1 to the Contract (“Amendment No. 1”), to provide for the use of Global Payments Inc. as an approved subcontractor for the processing of credit card transactions solely at the San Antonio International Airport Parking site location to incorporate the use of the Aviation Department’s Revenue Control System software application; and

**WHEREAS**, pursuant to Ordinance No. 2009-06-25-0589, passed and approved June 25, 2009, CITY and CONTRACTOR entered into Amendment No. 2 to the Contract (“Amendment No. 2”), to increase the number of locations which require the ability to process credit card payments through Ticketmaster from one (1) to five (5); and

**WHEREAS**, pursuant to Ordinance No. 2010-06-03-0489, passed and approved June 3, 2010, CITY and CONTRACTOR entered into Amendment No. 3 to the Contract (“Amendment No. 3”), to **(1)** further amend the Contract (“Third Amendment And Renewal And Extension”) to: (a) provide for one (1) two-year renewal term rather than two (2) one-year renewal terms, and (b) provide for termination of Amendment No. 1 upon mutual agreement of the Parties; and **(2)** as so amended, renew and extend the Contract for the two-year extension, to commence July 1, 2010, and terminate June 30, 2012

**WHEREAS**, the renewal term of the Contract expires on June 30, 2012; and

**WHEREAS**, City now desires to **(a)** amend the Contract to provide for up to four (4) additional extensions of one (1) month each upon the same terms and conditions set forth in the Contract and **(b)** as so amended, to renew and extend the Contract for the first of the additional one (1) month extensions, and Contractor desires to do the same; **NOW, THEREFORE**

**FOR VALUABLE CONSIDERATION**, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

## **I. DEFINITIONS**

- 1.1 For purposes of this Fourth Amendment And Second Renewal, the word “City” as used herein shall refer to **THE CITY OF SAN ANTONIO**, a Texas Home-Rule Municipal Corporation.
- 1.2 For purposes of this Fourth Amendment And Second Renewal, the term “Contractor” as used herein shall refer to **BANK OF AMERICA, N.A.**, a national banking association
- 1.3 For purposes of this Fourth Amendment And Second Renewal, the word “Contract” as used herein shall refer to that certain *Merchant Banking Services Contract* dated May 23, 2007, which was authorized by Ordinance No. 2007-03-29-0307, passed and approved on March 29, 2007.

## **II. AMENDMENT OF ARTICLE II OF CONTRACT**

- 2.1 Article II. Term of the Contract is hereby amended so as to add thereto Section 2.1.1, which shall read as follows:

“2.1.1. City shall further have the option to renew this Contract on the same terms and conditions for up to four (4) additional terms of one (1) month each, with the first of such terms beginning July 1, 2012, and ending July 31, 2012. City shall notify Contractor in writing of the exercise of its option to renew this Contract for an additional one (1) month term not less than ten (10) days prior to the expiration of the then current term. The exercise of any such option shall not require approval or action by the City Council.”

## **III. RENEWAL AND EXTENSION OF CONTRACT**

- 3.1 The Contract is hereby renewed and extended for a term of one (1) month, beginning on July 1, 2012 and ending on July 31, 2012, pursuant to the provisions of Article II, Section 2.1.1 of the Contract.

#### **IV. SCOPE OF SERVICES**

- 4.1 Contractor shall provide the same services during the term of this Renewal and Extension as are set forth in Article IV of the Contract.

#### **V. CONSIDERATION**

- 5.1 The fees to be paid to Contractor during the term of this Renewal and Extension, in consideration of the performance of its services in accordance with this Renewal and Extension, shall be those set forth in the Pricing document, attached to the Contract and incorporated as Exhibit I and as updated due to changes in Association fees (such as interchange, assessment, and other related charges).

#### **VI. CONFLICT OF INTEREST**

- 6.1 For the purposes of this Fourth Amendment And Second Renewal, Contractor warrants and certifies, and this Fourth Amendment And Second Renewal is entered into and executed by City in reliance thereon, that Contractor, its officers, employees and agents are neither officers nor employees of the City, as those terms are defined in Division 2, Section 2.52 of the *City Of San Antonio Ethics Code* dated March 2, 2006, as amended on June 25, 2009 (“Ethics Code”). Contractor further warrants and certifies that it has tendered to the City a current *City of San Antonio Discretionary Contracts Disclosure* in compliance with the Ethics Code.
- 6.2 The terms and conditions of Article XXII of the Contract shall apply to this Renewal.

#### **VII. INCORPORATION OF TERMS AND CONDITIONS OF CONTRACT BY REFERENCE**

- 7.1 Except as provided for in this Fourth Amendment And Second Renewal, all other terms and conditions of the Contract are hereby renewed and extended, and are incorporated into this Fourth Amendment And Second Renewal, and are made a part hereof for all purposes.

#### **VIII. CONFLICT PROVISIONS**

- 8.1 Any conflict between the provisions of this Fourth Amendment And Second Renewal and the provisions of the Contract shall be resolved in favor of this Fourth Amendment And Second Renewal.

EXECUTED and AGREED TO this the \_\_\_\_\_ day of June, 2012.

**CITY:**  
CITY OF SAN ANTONIO

**CONTRACTOR:**  
BANK OF AMERICA, N.A.

\_\_\_\_\_  
Ben Gorzell, Jr., CPA  
Chief Financial Officer

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Robert Nordhaus  
Assistant City Attorney