

AN ORDINANCE 2015-02-19-0118

APPROVING A TEN (10) YEAR EXTENSION TO THE TELECOMMUNICATIONS SERVICE AGREEMENT WITH SMART CITY NETWORKS, LLC (“SMART CITY”) FOR TELECOMMUNICATION SERVICES AT THE HENRY B. GONZALEZ CONVENTION CENTER.

\* \* \* \* \*

**WHEREAS**, Smart City is the premier provider of technology services including telephone, internet, network, and wireless services for 14 of the top 25 convention centers in the United States; and

**WHEREAS**, in 2008, the City Council approved a five (5) year Telecommunication Service Agreement (the “Agreement”) with a five (5) year renewal option for telecommunication services with Smart City; and

**WHEREAS**, the City renewed the agreement for a period of five (5) years commencing in 2013; and

**WHEREAS**, Smart City is proposing a ten (10) year extension of the Agreement commencing in June 2018 and has offered as consideration for the extension an increase in commissions to the City, \$1.9 million in overhaul and replacement of the Convention Center’s technology infrastructure, an increase in the technology fund, and an investment in technology infrastructure of \$500,000.00 in 2023; and

**WHEREAS**, City staff is recommending approval of an extension of the Agreement based upon Smart City’s history of satisfactory performance, the importance of consistency in providing a high-level of uninterrupted customer service, and the successful financial performance that Smart City has provided to the City; **NOW THEREFORE:**

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

**SECTION 1.** The terms and conditions of a ten (10) year extension to the Amended and Restated Telecommunication Services Agreement between the City and Smart City Networks, L.L.C., are hereby approved. A copy of the extension, in substantially final form, is attached hereto and made a part of this Ordinance as **Exhibit A**. A copy of the fully executed Agreement will be attached to this Ordinance and will replace **Exhibit A**.

**SECTION 2.** The City Manager or her designee is authorized to enter into a ten (10) year extension agreement in accordance with this Ordinance.

**SECTION 3.** Funds generated by this Ordinance shall be deposited into Fund No. 29006000 Hotel Motel Tax, Internal Order No. 242000000838 Convention Center Telecommunications,

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Item No. 18

General Ledger 4407707, entitled "Commissions Contracts Telecommunication" or General Ledger 4407725, entitled "Miscellaneous Revenue."

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This Ordinance shall become effective immediately upon its passage by eight (8) votes of the City Council and if passed upon fewer than eight (8) votes after the tenth (10<sup>th</sup>) day after passage.

PASSED AND APPROVED this 19<sup>th</sup> day of February, 2015.



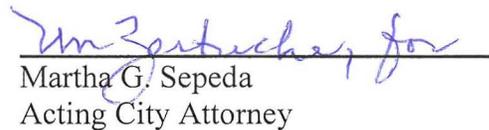
M A Y O R  
Ivy R. Taylor

**ATTEST:**



Leticia M. Vacek  
City Clerk

**APPROVED AS TO FORM:**



Martha G. Sepeda  
Acting City Attorney

<b>Agenda Item:</b>	<b>18 ( in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 )</b>						
<b>Date:</b>	02/19/2015						
<b>Time:</b>	10:27:04 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a ten year extension to the data and telecommunications contract between the City and Smart City Networks, LLC commencing on July 1, 2018. [Ed Belmares, Assistant City Manager; Michael Sawaya, Director, Convention and Sports Facilities]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1	x					
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

# Exhibit A

**FIRST AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT FOR  
TELECOMMUNICATION SERVICES AT THE HENRY B. GONZALEZ COVENTION  
CENTER**

**BETWEEN THE CITY OF SAN ANTONIO AND SMART CITY L.L.C.**

This First Amendment to the Amended and Restated Agreement for Telecommunication Services at the Henry B. Gonzalez Convention Center (hereinafter referred to as this "Amendment") is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "City") a Texas municipal corporation acting by and through its City Manager pursuant to Ordinance No. 2015-02-19-\_\_\_\_\_, dated February 19, 2015 and Smart City L.L.C. (hereinafter referred to as "Vendor"). Together, City and Vendor may be referred to jointly as the "Parties."

**RECITALS**

- A. City and Vendor are parties to that certain Amended and Restated Agreement for Telecommunication Services at the Henry B. Gonzalez Convention Center (the "Agreement") entered into pursuant to City Ordinance No. 2008-06-19-0603 passed and approved on June 6, 2008.
- B. The Agreement was for an initial Term of five (5) years, commencing on July 1, 2008 and terminating on June 30, 2013.
- C. In accordance with Article 2.2, the Agreement was renewed for a period of five (5) years commencing on July 1, 2013 and terminating on June 30, 2018.
- D. The Parties seek to amend the Term of the Agreement to provide for an additional ten (10) year term commencing on June 30, 2018 and terminating on June 30, 2028.
- E. As consideration for the ten (10) year extension of the Term of the Agreement, the Parties are also amending other terms as outlined in this Amendment.
- F. All other provisions of the Agreement remain in full force.

**AMENDMENT**

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained in the Agreement and this Amendment, the receipt and adequacy of which are hereby acknowledged, City and Contractor hereby agree as follows:

1. **Definitions.** All capitalized terms used in this Amendment without definition herein shall have the meanings assigned to such terms in the Agreement.
2. **Amendments.** The Agreement is hereby amended as follows:

(A) Article 2 is amended to add the following section:

2.4 Extension Term. *Commencing on July 1, 2018, this Agreement shall be extended for an additional ten (10) years, terminating on July 1, 2028.*

(B) Article 3.11 is amended to delete the first sentence in its entirety and replace it with the following sentence:

*“Vendor shall establish and maintain a Marketing and Technology Fund which shall be comprised of Vendor deposits equal to three-percent (3%) of monthly Gross Receipts and that shall accrue from the commencement date of this Agreement and terminate upon the expiration of this Agreement.”*

The remaining verbiage of Article 3.11 shall remain unchanged.

(C) Article 4.1 is amended to include the following:

4.1(a) Additional Investment. *No later than June 30, 2023, Vendor shall pay to City an additional investment of FIVE HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$500,000.00).*

(D) Article 4.2 is deleted in its entirety and replaced with the following:

4.2 Commission Percentage. *For the rights and benefits conferred upon Vendor by City, Vendor shall pay City, in the manner described below, the following applicable percentage of Gross Receipts for all Telecommunication Services provided each month:*

- (a) On Gross Receipts greater than \$3.5 million, Vendor shall pay to City a commission rate of Thirty-Seven percent (37%);*
- (b) On Gross Receipts greater than \$3.0 million but less than \$3.5 million, Vendor shall pay to City a commission rate of Thirty-Six percent (36%);*
- (c) On Gross Receipts greater than \$2.5 million but less than \$3.0 million, Vendor shall pay to City a commission rate of Thirty-Five percent (35%);*
- (d) On Gross Receipts greater than \$2.0 million but less than \$2.5 million, Vendor shall pay to City a commission rate of Thirty-Four percent (34%);*
- (e) On Gross Receipts greater than \$1.5 million but less than \$2.0 million, Vendor shall pay to City a commission rate of Thirty-Three percent (33%);*
- (f) On Gross Receipts less than \$1.5 million, Vendor shall pay to City a commission rate of Thirty-percent (30%);*

*All Commissions will begin to accrue on the first day of the month in which this Agreement is executed. Vendor is precluded from disclosing to, in writing or otherwise, and from negotiating the percentage of revenue Vendor pays to City under this Agreement with Licensees, Exhibitors or Lessees.*

(E) Article 5.1 is amended to include the following:

*5.1.5 Vendor shall perform a complete overhaul and replacement of the Convention Facilities technology infrastructure both in the existing building and in the new expanded Center estimated at ONE MILLION NINE HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$1,900,000.00).*

3. **Effective Date.** *RESERVED.*
4. **No Other Changes.** Except as specifically set forth in Section 2 of this Amendment, all of the terms and conditions of the Agreement shall remain the same and are hereby ratified and confirmed. The Agreement and this Amendment shall be read and construed as one instrument.
5. **Choice of Law.** This Amendment shall be construed in accordance with and governed by the laws of the State of Texas.
6. **Counterparts.** This Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this Amendment it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

*Signatures appear on next page.*

IN WITNESS HEREOF, the parties hereto have executed in triplicate originals this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF SAN ANTONIO**  
**Texas Municipal Corporation**

**SMART CITY L.L.C.**  
**Limited Liability Corporation**

\_\_\_\_\_  
Sheryl L. Sculley  
City Manager

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Leticia Vacek  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Martha G. Sepeda  
Acting City Attorney