RKN
06/19/14
Item 6

AN ORDINANCE 2014-06-19-0444

AUTHORIZING THE THIRD AMENDMENT TO THE AUTOMATED TELLER MACHINE LICENSE AGREEMENT WITH CARDTRONICS USA, INC. TO PROVIDE FOR ATM SERVICES AT NINE LOCATIONS THROUGHOUT THE CITY FOR A FIVE (5) YEAR TERM ENDING SEPTEMBER 30, 2019, WITH ONE FIVE (5) YEAR RENEWAL OPTION.

* * * * *

WHEREAS, a Request For Proposals ("RFP") was issued by City Staff on December 20, 2013; and

WHEREAS, the RFP sought proposals to provide ATM services at specified locations throughout the City that will be serviced by the current contractor through July 31, 2014; and

WHEREAS, one Proposal was received in response to the RFP, and it was deemed non-responsive by City Staff, and the RFP was cancelled; and

WHEREAS, the City has an existing contract with CARDTRONICS USA, INC. ("Cardtronics"), pursuant to which Cardtronics provides ATM services at the Alamodome; and

WHEREAS, Cardtronics is willing to provide ATM services at nine (9) locations throughout the City other than the Alamodome ("Additional Locations") that will be serviced by the prior contractor through July 31, 2014; and

WHEREAS, City Staff recommends amendment of the existing contract with Cardtronics to include the provision of ATM services at the Additional Locations for a five (5) year term ending September 30, 2019, with one (1) five (5) year renewal term; and

WHEREAS, the City Council, upon consideration of and deliberation on such recommendation, desires to accept City Staff's recommendation; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the *Third Amendment To Automated Teller Machine License Agreement* ("Third Amendment") with Cardtronics for an initial five (5) year term ending September 30, 2019, with one (1) five year renewal term, are hereby approved.

The City Manager, or her designee, or the Director of Finance, or his designee, are each hereby authorized eight (8) business days from the effective date of this Ordinance within which to negotiate and execute the Third Amendment, substantially according to the terms and conditions set forth in **Attachment I** to this Ordinance. If the Third Amendment is not negotiated and executed within said eight (8) business days, or if the parties cannot agree to terms of such

document within such time, then there shall be no authority to execute the Third Amendment unless there is subsequent City Council approval.

SECTION 2. Funds generated by this Ordinance will be deposited as per the table below:

Amount	General Ledger	Internal Order	Fund
$67,400.00	4401131	207000000809	11001000
$17,000.00	4401131	242000000269	29006000
Total Amt $84,400.00			

SECTION 3. 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 4. This Ordinance is effective immediately, upon passage by eight (8) affirmative votes; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED and APPROVED this 19th day of June, 2014.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Robert F. Greenblum, City Attorney

Agenda Item:	**6 (in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, 21, 24, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38A, 38B, 39A, 39B, 40A, 40B, 40C)**
Date:	06/19/2014
Time:	10:29:56 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving an amendment to the Automated Teller Machine Service Contract between Cardtronics and the City of San Antonio to provide a total of 19 ATMs to be located throughout the City and expected to generate approximately $108,709.00 in total revenues, of which, an estimated $67,400.00 will be deposited in the General Fund and estimated $41,309.00 will be deposited in the Hotel Occupancy Tax Fund revenues annually. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Director, Finance]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x			x	
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

A T T A C H M E N T I

THIRD AMENDMENT TO
AUTOMATED TELLER MACHINE LICENSE AGREEMENT

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, this *Third Amendment to Automated Teller Machine License Agreement* ("Third Amendment") is entered into by and between the **CITY OF SAN ANTONIO**, a Texas Home-Rule Municipal Corporation ("City"), acting herein by and through its Chief Financial Officer or his designee, and **CARDTRONICS USA, INC.,** a corporation incorporated in the State of Delaware ("Licensee"), acting herein by and through its duly designated officer. City and Licensee are sometimes hereinafter collectively referred to as the "Parties".

A. City and Licensee entered into that certain *Automated Teller Machine License Agreement* ("Agreement") pursuant to City of San Antonio Ordinance No. 2010-10-21-0919, passed and approved October 21, 2010.

B. City and Licensee entered into that certain *First Amendment to Automated Teller Machine License Agreement* ("First Amendment") dated September 15, 2011.

C. City and Licensee entered into that certain *Extension Agreement and Second Amendment to Automated Teller Machine License Agreement* ("Extension Agreement and Second Amendment") pursuant to City of San Antonio Ordinance No. 2013-11-21-0814, passed and approved November 21, 2013.

D. The Parties desire and agree to amend the Agreement, as previously amended by the First Amendment and the Extension Agreement and Second Amendment, as hereinafter set forth in this Third Amendment.

E. Section 1.8 is deleted in its entirety and replaced with the following:

> "1.8 Licensed Premises" means **(1)** the Alamodome, 100 Montana Street, a City-owned property, which is located in San Antonio, Bexar County, Texas; **(2)** each of the ten (10) Additional Locations identified with specificity in Section 2.3.3 of the Agreement (as added by Section G of this Third Amendment); and **(3)** upon inclusion of some or all of the Contingent Additional Locations as Additional Locations in the manner provided in Section 2.3.4 of the Agreement (as added by Section H of this Third Amendment), each of the Contingent Additional Locations that are added as Additional Locations."

F. Subsection 2.2.1 is deleted in its entirety and replaced with the following:

"2.2.1 The exclusive right to install and operate **(1)** at least nine (9) Permanent ATMs at the Locations inside the Licensed Premises identified in Section 2.3.1; **(2)** at least nine (9) additional ATMs ("Additional ATMs") at the Locations inside the Licensed Premises identified in Section 2.3.3; and **(3)** an ATM at each of the Contingent Additional Locations that are included as Locations in the manner provided in Section 2.3.4 of the Agreement (as added by Section H of this Third Amendment).

G. Section 2.3 is hereby amended so as to add Subsection 2.3.3, which shall read as follows:

"2.3.3 Additional Locations and Additional ATMs

2.3.3.1 Henry B. Gonzalez Convention Center - 200 East Market (wall inset unit facing Market);

2.3.3.2 Henry B. Gonzalez Convention Center –200 East Market (Lila Cockrell Theater, standing kiosk);

2.3.3.3 Market Square - 514 West Commerce (wall inset unit);

2.3.3.4 One Stop Service Center - 1901 South Alamo (standing kiosk);

2.3.3.5 Police Headquarters - 315 Santa Rosa(standing kiosk);

2.3.3.6 Riverview Towers – 111 Soledad, Suite 400 (standing kiosk);

2.3.3.7 Municipal Court – 401 S Frio (standing kiosk)

2.3.3.8 Farmer's Market Plaza - 612 W. Commerce (standing kiosk); and

2.3.3.9 Farmer's Market Plaza - 612 W. Commerce (standing kiosk)."

H. Section 2.3 is hereby further amended so as to add Subsection 2.3.4, which shall read as follows:

"2.3.4 Contingent Additional Locations. Upon written agreement of the Parties, which agreement will not require approval of the San Antonio City Council, Contingent Additional Locations will be included as Additional Locations, and Licensee shall have the exclusive right to install and operate Additional ATMs at those Additional Locations. The Contingent Locations are: **(1)** the San Antonio International Airport; and **(2)** any other

location(s) agreed upon by the Parties and included in the written agreement described above.

I. Section 4.1 of the Agreement is hereby amended so as to add Subsection 4.1.5, which shall read as follows:

"4.1.5 Additional ATMs.

4.1.5.1 Additional ATMs added by this Third Amendment shall comply with all requirements of Section 4.1 of the Agreement."

J. Section 5.2 of the Agreement shall **not** apply to the Additional ATMs added by this Third Amendment. The **(1)** Transaction Fees to be imposed and collected by Licensee upon transactions conducted at each Additional ATM, **(2)** License Fees to be paid by Licensee to City, and **(3)** changes in Transaction Fee, shall be in accordance with item 8 of the Extension Agreement and Second Amendment, where the Transaction Fee shall be $2.75.

K. Section 5.1 and Sections 5.4 through 5.11, inclusive, of the Agreement shall apply to the Additional ATMs added by this Third Amendment.

L. The following sections shall be added to Article V Fees and Payment Terms of the Agreement:

5.12 Fee Adjustments. This Section 5.12 shall apply only to the Additional ATMs added by this Third Amendment, and shall **not** apply to the remainder of the Agreement.

At any time after the first year of the term of this Third Amendment and upon occurrence of any the following, which results in a decrease in revenue in excess of $0.05 per Cash Transaction, either: (i) the Transaction Fee shall be increased by $0.25 in order for the Licensee to make up for the lost revenue, and the remaining amount will be split equally between the City and Licensee, or (ii) the City's License Fee shall be reduced by an amount equal to the lost revenue in excess of $0.05 per Cash Transaction.

(a) By the 20th day of each April, July, October, and January throughout the term hereof, including any renewal term, Licensee will report to City the LIBOR as of the last day of the preceding March, June, September, and December. If LIBOR has increased fifty (50) or more Basis Points since either (i) the previous quarterly report or (ii) the Last Adjustment Date, then for purposes of this Section 5.12, the increased cost

for Licensee shall be deemed to be $0.045 for every Cash Transaction (defined below); or

(b) In the event that during any calendar month the average Interchange received by Licensee with respect to all cash withdrawal transactions (each a "Cash Transaction") conducted at the ATMs is less than the Interchange Baseline.

5.13 Change in Fees. This Section 5.13 shall apply only to the Additional ATMs added by this Third Amendment, and shall **not** apply to the remainder of the Agreement.

In the event any local, state or federal or Network entity action eliminates, reduces or freezes the fees that can be earned by an Additional ATM, including not only the Transaction Fee, but also Interchange or other fees generated by an Additional ATM, Licensee will have the right to either reduce the License Fees so as to offset or neutralize the reduction of any fees earned by Licensee or to terminate this Agreement as to all Additional ATMs affected by the action.

The following terms are defined for the purposes of Sections 5.12 and 5.13, as follows:

"Basis Points" means 1/100th of 1%.

"Interchange" means the fee assessed, levied or charged by the applicable Network and paid by the card-issuing financial institution to Licensee on any cash withdrawal transaction accepted by that financial institution, less any fees charged by the applicable Network on the cash withdrawal transaction or the Additional ATM.

"Interchange Baseline" means the quotient of (i) the total Interchange during the first 90 days of this Agreement following the date on which the first Cash Transaction occurs divided by (ii) the total number of Cash Transactions during that same 90 day period.

"Last Adjustment Date" means the date on which the License Fee was last adjusted to reflect the increased cost of providing Vault Cash to the Additional ATMs.

"LIBOR" means the thirty (30) day London Interbank Borrowing Rate in U.S. dollar currency as referenced in Reuters Screen LIBOR01 Page (or the successor thereto), described in terms of Basis Points.

"Network" any electronic funds transfer network that enables the transfer of funds into or out of a person's bank account, prepaid card or other financial account in connection with a transaction being completed at an Additional ATM. Networks include, without limitation, Visa, Plus MasterCard, Cirrus, Pulse and others.

"Vault Cash" means any United States currency that is placed into the ATMs, as well as that currency that is in the custody of any armored carrier or financial institution pending it being loaded into an Additional ATM; provided, however that upon being dispensed to any cardholder pursuant to a cash withdrawal transaction such currency ceases to be Vault Cash.

M. Section 3.1 of the Agreement shall **not** apply to this Third Amendment. The initial term of this Third Amendment shall commence on the date the Ordinance approving it is adopted by the San Antonio City Council, and will end on September 30, 2019.

N. The provisions of Subsections 3.2 and 3.3 of the Agreement, as amended by item 6 of the Extension Agreement and Second Amendment, shall **not** apply to this Third Amendment.

The term of this Third Amendment may be renewed and extended by the Parties for one (1) five (5) year term by written agreement signed by Licensee and City's Finance Director (defined below), subject to the right reserved by City to modify all terms and conditions in this Third Amendment upon renewal, excepting the provisions of Section L above and Section O below. Modification of either of those Sections require agreement of Licensee and City, must be in writing, and requires the passage of an Ordinance by the San Antonio City Council.

Licensee shall give written notice to City of its desire to renew this Third Term for the five year renewal term at least ninety (90) days prior to the expiration of the initial term of this Third Amendment. City shall indicate within thirty (30) days of receiving notice from Licensee of its agreement to renew this Third Amendment for the renewal term.

O. Except as provided below with regard to the definition of "Alternate Transactions", Section 10.3 of the Agreement shall **not** apply to the Additional ATMs added by this Third Amendment. The provisions set forth below shall apply to this Third Amendment but shall **not** apply to the remainder of the Agreement.

"Revenue Generating Advertising. Any other advertising, co-branding or signage, whether on-screen or hardcopy displayed on or about an Additional ATM or on transaction receipts generated by an Additional ATM shall require the advance written approval of Finance Director, which shall not be unreasonably withheld, delayed or conditioned. Unless otherwise previously agreed to in writing by the parties, Licensee shall pay to City fifty percent (50%) of the gross proceeds received by either the branding partner or advertising partner as part of the Alternate Transactions as defined in Section 10.3 of the Agreement. The Finance Director shall have the authority to execute on behalf of City the written

agreement revising the percentage of fees to be received by City, without prior approval of the San Antonio City Council.

P. Section 17.2 of the Agreement, as heretofore amended, shall **not** apply to this Third Amendment. City shall **not** have a right to terminate this Third Amendment without cause or for convenience.

Q. The Parties acknowledge that Licensee will undertake a substantial capital expenditure in order to perform its obligations under this Third Amendment. In recognition of that fact, the Parties agree that the terms and conditions of this Third Amendment shall survive the termination of the Agreement **(1)** under any provision in Article XVII Termination, or **(2)** expiration of any Renewal Term of the Agreement without further renewal and extension. In the event of such termination of the Agreement, the terms and conditions of the Agreement as they existed on the date of termination shall be incorporated into and become a part of this Third Amendment. To the extent of any conflict between the terms and conditions of the Agreement so incorporated and the terms and conditions of this Third Amendment, the terms and conditions of this Third Amendment shall prevail and control.

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R. Except as **(1)** amended by the terms and conditions of this Third Amendment or **(2)** excluded from this Third Amendment by anything set out above, the terms and conditions of the Agreement, as heretofore amended, are ratified and confirmed, shall apply to this Third Amendment, shall remain in full force and effect, enforceable in accordance with their terms.

EXECUTED AND SIGNED this _____ day of June, 2014.

CITY:

CITY OF SAN ANTONIO
a Texas home-rule municipal corporation

_____
Ben Gorzell, Jr., CPA

Chief Financial Officer

LICENSEE:

CARDTRONICS USA, Inc.
a Texas corporation

_____
Rick Updyke
President, North America

APPROVED AS TO FORM:

_____
Robert K. Nordhaus
Assistant City Attorney