

AN ORDINANCE 2010-06-03-0489

**APPROVING THE *THIRD AMENDMENT AND RENEWAL AND EXTENSION OF MERCHANT BANKING SERVICES CONTRACT* WITH BANK OF AMERICA, N.A., TO (1) PROVIDE FOR: (A) TERMINATION OF AMENDMENT NO. 1 UPON MUTUAL AGREEMENT AND (B) ONE 2-YEAR RENEWAL, AND (2) AS SO AMENDED, RENEW AND EXTEND THE CONTRACT FOR THE TWO (2) YEAR RENEWAL; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.**

\* \* \* \*

**WHEREAS**, pursuant to Ordinance No. 2007-03-29-0307, passed and approved on March 29, 2007, the City and Bank of America, N.A. ("Bank of America") entered into that certain Merchant Banking Services Contract (the "Contract"), providing for Bank of America to provide merchant banking services to the City for a three (3) year term with two (2) one-year renewal periods, beginning July 1, 2007; and

**WHEREAS**, pursuant to Ordinance 2007-10-11-1088 passed and approved on October 11, 2007, City and Bank of America 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**, the initial three (3) year term of the Contract expires on June 30, 2010; and

**WHEREAS**, City Staff has recommended that (1) the Contract be further amended 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, to renew and extend the Contract for the two-year extension, to commence July 1, 2010, and terminate June 30, 2012; and

**WHEREAS**, Bank of America, N.A. is willing to amend and renew and extend the Contract as described above; and

**WHEREAS**, after due deliberations and upon consideration of the matter, the City Council desires to follow the City Staff recommendations in their entirety, **NOW, THEREFORE**

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

**SECTION 1.** The *Third Amendment And Renewal And Extension of Merchant Baking Services Contract* ("Third Amendment And Extension") between the City and Bank of America, N.A. is hereby approved in all things. A copy of the Second Amendment is attached hereto as Attachment I. The City Manager, the City Manager's designee, or the City's Chief Financial Officer are hereby authorized to execute the Third Amendment And Extension on behalf of the City of San Antonio. In the event the parties are unable to execute the Third Amendment And Extension containing substantially the same terms set forth in Attachment I within forty-five (45) business days from the effective date of this Ordinance, authority to execute the Third Amendment And Extension is subject to subsequent City Council approval.

The Third Amendment and Extension **(1)** further amends the Contract 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, renews and extends the Contract for the two-year extension, to commence July 1, 2010, and terminate June 30, 2012.

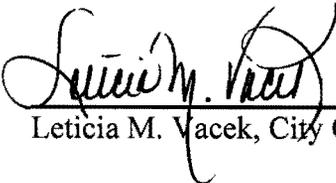
**SECTION 2.** This Ordinance shall take effect immediately if passed by eight (8) affirmative votes; otherwise this Ordinance shall take effect ten (10) days from the date of passage hereof.

**PASSED and APPROVED** this 3<sup>rd</sup> day of June, 2010.

  
M A Y O R  
Julián Castro

**ATTEST:**

**APPROVED AS TO FORM:**

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

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

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

**THIRD AMENDMENT  
AND  
RENEWAL AND EXTENSION  
OF  
MERCHANT BANKING SERVICES CONTRACT**

This *Third Amendment And Renewal And Extension Of Merchant Banking Services Contract* ("Third Amendment And Extension") is entered into by and between the **CITY OF SAN ANTONIO, TEXAS** (hereinafter referred to as "CITY"), a Texas Municipal Corporation, acting by and through its City Manager, or its Chief Financial Officer, pursuant to Ordinance No. 2010-0\_\_-\_\_-\_\_, passed and approved \_\_\_\_\_, 2010, 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**, the initial three (3) year term of the Contract expires on June 30, 2010; and

**WHEREAS**, CITY and CONTRACTOR desire and have agreed 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; **NOW, THEREFORE**

THIRD AMENDMENT AND RENEWAL AND EXTENSION  
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**FOR VALUABLE CONSIDERATION, CITY and CONTRACTOR hereby severally and collectively agree as follows:**

**I. AMENDMENT OF CONTRACT**

1.1 The Contract is hereby further amended to revise Article II, Section 2.1, so that the said Article II, Section 2.1 shall hereafter read as follows:

**“II. TERM**

2.1 The term of this Contract shall be for a period of three (3) years, commencing July 1, 2007, and terminating June 30, 2010. CITY, at its sole discretion and option, shall have the right to renew or extend this Contract for one (1) additional two (2) year term, under the same terms and conditions as herein stated, contingent upon City Council approval to exercise said option. In the event CITY elects not to renew this Contract, CITY shall notify CONTRACTOR, in writing, at least sixty (60) days before the expiration of the then-current Contract term. Except as agreed to by CITY and CONTRACTOR pursuant to Amendment No. 1, the Amendment No. 2, or subsequent amendments to this Contract, CITY will not use the services of any bank, corporation, entity or person other than CONTRACTOR for authorization of Visa or MasterCard transactions or for processing MasterCard and Visa transactions data throughout the term of this Contract.”

1.2 The Contract is hereby further amended to provide that upon mutual agreement of the Parties that utilization of Global East as an approved subcontractor under the Contract in connection with the San Antonio International Airport Parking site location is no longer necessary, the Parties may agree in writing that such is the case, and that as a result thereof Amendment No. 1 is no longer necessary and may be terminated. The Chief Financial Officer may execute a written agreement to that effect on behalf of the CITY, without the necessity of approval by CITY’s City Council. Such written agreement shall be substantially in accordance with the terms and conditions set forth in Exhibit 1 to this Third Amendment And Extension, which is incorporated herein by reference for all purposes. Upon execution of this written agreement by the Parties, Amendment No. 1 shall immediately terminate, and the fees for transactions processed at the San Antonio International Airport Parking site location shall immediately revert to the Pricing document attached to the Contract as Attachment I, subject to the fee change provisions set forth in Article III, Section 3.3 of the Contract. Also immediately upon execution of such written agreement, CONTRACTOR shall at its sole cost and expense (if any) take all actions necessary to immediately terminate the services of Global East as a subcontractor under the Contract.

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**II. RENEWAL AND EXTENSION OF CONTRACT**

2.1 Pursuant to the provisions of Article II, Section 2.1 of the Contract, as amended by the above and foregoing Article I of this Third Amendment And Extension, CITY and CONTRACTOR mutually agree to renew and extend the term of the Contract for a period of two years, commencing July 1, 2010, and terminating June 30, 2012.

**III. REMAINDER OF CONTRACT UNCHANGED AND IN FULL FORCE AND EFFECT**

3.1 All other terms and conditions of the Contract, as amended by: (1) Amendment No. 1 as described above, (2) Amendment No. 2 as described above, and (3) the Third Amendment And Renewal And Extension, shall remain unchanged and in full force and effect during this renewal and extension.

EXECUTED this the \_\_\_\_ day of \_\_\_\_\_, 2010.

**CITY:**

**CONTRACTOR:**

**CITY OF SAN ANTONIO, TEXAS**

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

BY:

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

BY:

\_\_\_\_\_  
[Name of Officer]  
[Title of Officer]

Approved as to Form:

\_\_\_\_\_  
Robert K. Nordhaus  
Assistant City Attorney

**E X H I B I T 1**

**THIRD AMENDMENT AND RENEWAL AND EXTENSION  
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AGREEMENT TERMINATING AMENDMENT NO. 1  
TO  
MERCHANT BANKING SERVICES CONTRACT

This *Agreement Terminating Amendment No. 1 To Merchant Banking Services Contract* (“Agreement”) is entered into by and between The City of San Antonio, Texas (“CITY”) and Bank of America, N.A. (“CONTRACTOR”), to be effective from and after the date last written below (“Effective Date”). CITY and CONTRACTOR may be hereinafter referred to as the Parties.

In accordance with and pursuant to the provisions of Article I, Section 1.2 of that certain *Third Amendment And Renewal And Extension Of Merchant Banking Services Contract* (“Third Amendment And Extension”), executed by the Parties and dated June \_\_\_\_, 2010, the Parties hereby mutually agree that Amendment No. 1 To Merchant Banking Services Contract, dated \_\_\_\_\_, is hereby terminated, effective as of the Effective Date.

As provided in Article I, Section 1.2 of the Third Amendment And Extension, the fees for transactions processed at the San Antonio International Airport Parking site location shall immediately revert to the Pricing document attached to the Contract as Attachment I, subject to the fee change provisions set forth in Article III, Section 3.3 of the Contract.

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As also provided in Article I, Section 1.2 of the Third Amendment And Extension, CONTRACTOR shall at its sole cost and expense (if any) immediately take all actions necessary to immediately terminate the services of Global East as a subcontractor under the Contract.

IN TESTIMONY OF WHICH this Agreement is executed by the Parties on the date(s) set forth below, to be effective on the Effective Date.

CITY:  
CITY OF SAN ANTONIO, TEXAS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Ben Gorzell, Chief Financial Officer

CONTRACTOR:  
BANK OF AMERICA, N.A.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
(Written Name and Title)