

AN ORDINANCE 2007-03-29-0307

**AUTHORIZING THE CITY MANAGER OR THE DIRECTOR OF FINANCE TO EXECUTE A CONTRACT WITH BANK OF AMERICA, N.A. TO PROVIDE MERCHANT BANKING SERVICES AND RELATED FINANCIAL SERVICES TO THE CITY OF SAN ANTONIO FOR A PERIOD OF THREE (3) YEARS, COMMENCING ON JULY 1, 2007 AND ENDING JUNE 30, 2010, WITH AN OPTION TO RENEW FOR TWO (2) ADDITIONAL ONE (1) YEAR PERIODS; AND AUTHORIZING OTHER MATTERS INCIDENT AND RELATED THERETO.**

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**WHEREAS**, a Request for Proposal (“RFP”), soliciting proposals for the provision of depository banking services, lockbox services and merchant banking services was released on December 18, 2006; and

**WHEREAS**, five (5) firms submitted responsive proposals for provision of merchant banking services, which were received and evaluated by an evaluation committee; and

**WHEREAS**, the evaluation involved, among other inquiries, assessment of the services to be provided, including provision of equipment/software, credit and charge transaction authorization, routing and clearing and settlement services, training and technical support, and any related fees for such services; and

**WHEREAS**, in addition to evaluating the proposals, all five (5) firms submitting responsive proposals were interviewed by the evaluation committee, in order to address any outstanding issues and to gain a clear perspective of each firm’s ability to service the City’s unique and varied requirements; and

**WHEREAS**, City staff recommends that the City enter into a contract with Bank of America,, N.A. to provide merchant banking services and related services to the City; and

**WHEREAS**, authorization of all matters incident and related thereto is needed;  
**NOW THEREFORE:**

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

**SECTION 1.** The City Manager or the Director of Finance is authorized to execute a contract with Bank of America, N.A., to provide merchant banking services and related services to the City of San Antonio, for a period of three (3) years, commencing on July 1, 2007 and ending June 30, 2010, with an option to renew for two (2) additional one (1) year periods, contingent upon City Council approval to exercise the option. A copy of said contract, in substantially final form, is attached hereto and incorporated herein by reference, for all purposes as **Attachment I**. The City Manager or the Director of Finance is authorized forty-five (45) business days from the effective date of this ordinance within which to negotiate and execute a contract, substantially according to the terms and conditions set forth in **Attachment I**. If said contract is not negotiated and executed within said forty-five (45) business days, or if the parties cannot agree to terms of such contract within such time, then there shall be no authority to execute said contract unless there is subsequent City Council approval.

**SECTION 2.** It is hereby specifically provided that fully executed copies of **Attachment I** shall not be made available as public information. The City Clerk is authorized to make available to the public, in conformance with the Public Information Act, a copy of said **Attachment I**, without the specimen signatures, PIN numbers or other security devices contained therein. The City Council hereby finds that disclosure of such information would compromise the security of City funds.

**SECTION 3.** Any ordinance in conflict with the provisions contained in this Ordinance is hereby repealed to the extent necessary to resolve any such conflict.

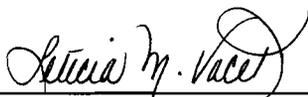
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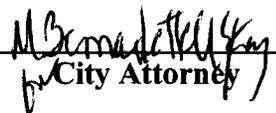
**SECTION 4.** This Ordinance shall take effect on the tenth (10<sup>th</sup>) day following passage hereof.

**PASSED AND APPROVED** this 29<sup>th</sup> day of March, 2007.

  
MAYOR

**PHIL HARDBERGER**

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
City Attorney

# Agenda Voting Results

**Name:** Consent Agenda, except for 8, 14, 18, 41, 53, 57, 58C

**Date:** 03/29/07

**Time:** 02:10:52 PM

**Vote Type:** Multiple selection

**Description:**

<b>Voter</b>	<b>Group</b>	<b>Status</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

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



CMS or Ordinance Number: OR00000200703290307

TSLGRS File Code: 1000-05

Document Title:  
ORD - Merchant Banking Services

**Ordinance Date:**  
**3/29/2007**



CMS or Ordinance Number: CN4600005957

TSLGRS File Code:1000-25

Document Title:  
CONT - Merchant Banking Services

**Commencement Date:**

**7/1/2007**

**Expiration Date:**

**6/30/2010**

## MERCHANT BANKING SERVICES CONTRACT

STATE OF TEXAS

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COUNTY OF BEXAR

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This Contract is 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, or her designated representative, or its Director of Finance, pursuant to Ordinance No. 2007-03-29-0307, passed and approved on March 29, 2007 and BANK OF AMERICA, N.A., a national banking association, acting by and through its duly authorized representative, (hereinafter referred to as "CONTRACTOR"). This Contract shall hereinafter be referred to as "Merchant Banking Services Contract" or "Contract".

**WHEREAS**, CITY solicited proposals from qualified firms to provide merchant banking services; and

**WHEREAS**, CONTRACTOR submitted a Proposal in response to CITY's solicitations; and

**WHEREAS**, CONTRACTOR will assume the complete responsibility of supplying equipment and software necessary to provide acceptance, processing and support services for credit, debit, smart and/or stored value cards, and, if necessary, subcontract with a firm to provide check authorization services; and

**WHEREAS**, after review and evaluation by CITY staff, CONTRACTOR was recommended to CITY'S City Council to provide merchant banking services, and the City Council accepted such recommendation and authorized the execution of this Contract; **NOW, THEREFORE**

**ACCORDINGLY**, for a good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 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 accomplishments of the tasks hereinafter described.

### I. DEFINITIONS

- 1.1 "ACH", as used herein, shall mean Automated Clearing House.
- 1.2 "Association", as used herein, is a group of Card issuer banks that facilitates the use of payment cards.
- 1.3 "Association Rules", as used herein, are the bylaws, rules, and regulations, as they exist from time to time, of the Associations.
- 1.4 "Business Day", as used herein, is any day in which the banks are open for business to the public.

- 1.5 “Card”, as used herein, is both, a plastic card (i.e. credit card and/or debit card,) or other evidence of the account and the account number, issued by a Card issuer to the Card holder, such as a MasterCard, Visa or JCB (Japanese Central Bank) Card or such other payment card as CONTRACTOR may agree to process.
- 1.6 “Cardholder”, as used herein, is the person to whom the Card is issued and who is entitled to use the Card.
- 1.7 “Cardholder Data”, shall mean information provided by or about a Cardholder in the course of a transaction or obtained through the use of a Card, including but not limited to, name, address, PIN, CVV number, magnetic stripe data and any other similar information, identifying the Cardholder or the related account.
- 1.8 “Chargeback”, as used herein, is a Card transaction that has been processed but, at a later date, is caused to be returned (debited from the depository account) by the Association.
- 1.9 “CITY”, as used herein, shall refer to the City of San Antonio.
- 1.10 “CONTRACTOR”, as used herein, shall refer to Bank of America, N.A.
- 1.11. “Depository Account”, as used herein, shall refer to the account to be hereafter established and maintained by CITY with its depository financial institution in accordance with the provisions of Sections 10 and 29 of this Contract.
- 1.12 “Parties”, as used herein, shall refer to both the CITY of San Antonio and Bank of America, N.A.
- 1.13 “Transaction Data”, or “Sales Data”, as used herein, is the evidence and electronic record of a transaction representing payment by use of a Card, or representing a refund/credit to a Cardholder.

## 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 two (2) additional one (1) year terms, 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. 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, with the exception of one (1) location which requires the ability to process credit card payments through Ticketmaster.

- 2.2 Renewal and extension of this Contract shall be subject to the approval of the City Council of CITY, evidenced by passage of an ordinance.
- 2.3 In the event CITY elects not to renew this Contract, CITY shall notify CONTRACTOR, in writing, at least ninety (90) days prior to expiration of the then-current Contract term.
- 2.4 In the event CONTRACTOR elects not to renew this Contract, CONTRACTOR shall notify CITY, in writing, at least one hundred eighty (180) days prior to expiration of the Contract term.
- 2.5 CITY may modify, as needed, CITY's Current Card site locations, attached hereto and incorporated herein by reference as Exhibit II, and each additional location shall be subject to the same terms and conditions of this Contract.

### **III. BILLING**

- 3.1 CONTRACTOR shall itemize all monthly fees/charges to CITY (i.e. charges and discount fees, adjustments and chargebacks, equipment charges, refunds and adjustments, reserve account amounts, etc.) and include the information on a monthly statement, which shall be provided to CITY by the fifth business day of the following month.
- 3.2 CONTRACTOR shall, on a monthly basis, debit the Depository Account for any fees and/or charges.
- 3.3 CONTRACTOR agrees that all fees listed in the Pricing document, attached hereto and incorporated herein by reference as Exhibit I, shall remain constant throughout the term of this Contract, except as follows:

By giving written notice to CITY, CONTRACTOR may change the fees, charges and discount resulting from (i) changes in Association fees (such as interchange, assessment and other charges); or (ii) changes in pricing by any third party provider of a product or service used by CITY upon mutual agreement of the parties. Such new prices will be applicable to CITY as of the effective date established by the Association or third party provider, or as of any later date specified in CONTRACTOR's notice to CITY.

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

- 4.1 CONTRACTOR shall provide end-to-end merchant banking services customarily provided in processing Card transactions, to include but not be limited to: provision of equipment/software; credit and charge transaction authorization; and routing and clearing and settlement services for all major credit card brands and debit cards, including at a minimum the Cards.
- 4.2 CONTRACTOR's hardware and software must interface with all transactions executed at all CITY's locations as currently configured, except for obsolete equipment, which shall be replaced upon conversion and execution of this Contract.

- 4.3 CONTRACTOR shall provide, at no cost to CITY, twenty-five (25) pieces of hardware consisting of Hypercom T7 Plus terminals to be utilized by CITY during the term of this Contract at locations determined solely by CITY. Upon termination of this Contract by any means, for any reason, and at any time, this hardware shall remain the property of CITY.
- 4.4 CONTRACTOR shall provide and interface with a check verification service for CITY.
- 4.5 CONTRACTOR shall provide electronic daily or monthly summary reporting by Terminal ID and/or Merchant location that will at a minimum produce the following reports:
  - 4.5.1 Total sales and transaction count by card type.
  - 4.5.2 Average transaction size by card type.
  - 4.5.3 Total disputed charges by card type.
  - 4.5.4 Total number of transactions by card type.
  - 4.5.5 Average transaction size by card type.
  - 4.5.6 Total credits.
  - 4.5.7 Total disputed charges by card type.
  - 4.5.8 Total number of disputed charges by card type.
  - 4.5.9 Total number of chargebacks by card type.
  - 4.5.10 Total number of transactions by merchant account location.
  - 4.5.11 Detail of each transaction by card type to include transaction amount, transaction date and transaction location.

Each of these reports shall be easily exportable and downloadable in various formats including Excel format.

- 4.6 CONTRACTOR shall provide gross settlement of all Card transactions to CITY, except for deductions as otherwise allowed under this Contract, using ACH transfer to the Depository Account no later than forty-eight (48) hours after the payment and credit records have been batched and transmitted. To the extent Transaction Data does not represent sufficient credits or the bank account does not have a sufficient balance to pay amounts due from CITY under this Contract, CONTRACTOR may pursue one or more of the following options: (i) demand and receive immediate payment for such amounts; (ii) debit the Depository Account for the amount of the negative balance; (iii) withhold settlement payments until all amounts are paid; (iv) delay presentation of refunds until CITY makes a payment of a sufficient amount to cover the negative balance; and (v) pursue any remedies CONTRACTOR may have at law or in equity.
- 4.7 CONTRACTOR shall process individual transactions ranging from a minimum of \$1.00 to a maximum of \$100,000.00.
- 4.8 CONTRACTOR shall provide training to CITY personnel as required related to payment and credit/debit card processing requirements, chargebacks, accessing reports and transaction data, equipment, and/or other processes and procedures which may be required. Such training will be provided primarily through the use of telephone

conferences; however, in-person training shall be arranged by the Parties and provided by CONTRACTOR on an as-needed basis as determined by CITY, at no cost to CITY.

- 4.9 CONTRACTOR shall provide a twenty-four (24) hour seven (7) day a week help desk for customer assistance to CITY departments.
- 4.10 CONTRACTOR shall have the capability of servicing and/or replacing any broken hardware no later than the next business day after CITY reports the problem.
- 4.11 CONTRACTOR shall provide electronic check processing services consisting at a minimum of the following: i) electronic check conversion at the point of sale; ii) Internet initiated check debits; and iii) check verification.
- 4.12 CONTRACTOR shall be able to authorize and process Card transactions via the Internet from the CITY's website, telephone, mail and in person.
- 4.13 CONTRACTOR shall be able to provide PIN-based debit card processing services including access to all major debit card networks.
- 4.14 CONTRACTOR shall perform such other functions normally contemplated to be the function of a merchant banking service provider.
- 4.15 CONTRACTOR shall, in accordance and in compliance with the terms, provisions and requirements of the Contract herein, manage, perform and provide all the activities and services required hereunder and shall produce all of the reports as set forth in this Contract.
- 4.16 CONTRACTOR'S Proposal, dated January 22, 2007, submitted to CITY in response to CITY's Request For Proposals, is incorporated herein by reference and made a part of this Contract for all purposes.

## V. ACCEPTANCE OF CARDS

- 5.1 CITY shall tender to CONTRACTOR all Transaction Data generated from all Card transactions via electronic data transmission, in accordance with CONTRACTOR's formats and procedures.
- 5.2 CITY shall honor without discrimination valid Cards properly tendered for use. Except as provided in Section 5.12, the CITY is not allowed to impose any surcharge or finance charge on the Card transaction or otherwise require the Cardholder to pay the fees payable by CITY under this Contract; however, the CITY is allowed to charge a convenience fee to the Cardholder.
  - 5.2.01 Honoring Cards Generally. The term "honor Cards" in this Section 5.2.01 is used to describe CITY's act of accepting a Card for transaction processing. CITY will not engage in any acceptance practice or procedure that discriminates against, or

discourages the use of, any particular Card type elected by CITY and approved by CONTRACTOR, in favor of any competing Card brand also elected and approved.

5.2.02 Cards Issued by U.S. Card Issuers. CITY will honor all Cards within the Card types elected and approved in accordance with this Contract. For example, if CITY elects to accept Visa credit Cards, CITY will submit payments from Visa-branded credit Card Cardholders without regard to whether the credit Card is a Visa-branded rewards credit Card or Visa-branded business purpose credit Card.

5.2.03 Cards Issued by Non-Contractor Card Issuers. CITY will honor all Cards issued by non-U.S. Card Issuers that bear the brand of a Card Organization specified on the Fee Schedule. For example, even if CITY elects to limit CITY's acceptance of MasterCard Cards to MasterCard credit Cards, CITY will accept for processing a MasterCard debit Card issued by a non-U.S. Card issuer.

5.3 CITY shall evidence each Card transaction by a single Transaction Data record compiled with the transaction date and transaction amount, and other information as may be required by the Associations and as communicated to CITY by the CONTRACTOR.

5.4 CITY shall implement reasonable procedures to ensure that each Card transaction is made by the Cardholder or an authorized user of the Card.

5.5 CITY acknowledges that (under the Association Rules) without an electronic record or physical imprint of the Card, CITY cannot rebut a chargeback where the Cardholder disputes making the transaction.

5.6 CITY agrees to comply with the CONTRACTOR's operating procedures ("Operating Guide") and Association Rules as may be applicable to CITY. The Operating Guide is attached hereto and incorporated herein by reference as Exhibit III.

5.7 The Operating Guide may be modified by CONTRACTOR, as needed to comply with the Association Rules. CONTRACTOR shall deliver one (1) hard copy and one (1) copy in electronic format on a CD-rom of the modified Operating Guide to CITY within three (3) business days after each modification by complying with the notice requirements imposed under Section 28.1 of this Contract.

5.8 For every card transaction, CITY represents and warrants:

- a. the Card transaction is genuine and arises from a bona fide transaction permissible under the Rules by the Cardholder directly with CITY, and not a transaction by the Cardholder with another merchant, represents a valid obligation for the amount shown on the Transaction Record, Preauthorized Order, or Credit Record, and does not involve the use of a Card for any other purpose;
- b. the Transaction Record is free of any alteration not authorized by the Cardholder;

- c. CITY has the title to the Transaction Record, and there are no liens or other encumbrances on it;
- d. the Transaction Record is not subject to any dispute, set-off or counterclaim;
- e. the Transaction Record is not for a transaction that has been previously submitted for processing;
- f. each statement on the Transaction Record is true, and CITY has no knowledge of facts that would impair its validity or collectibility, and the Transaction Record is not one that CITY knows or should have known to be either fraudulent or not authorized by the Cardholder;
- g. CITY has completed only one Card transaction per sale, or one Card transaction per shipment of goods for which the Cardholder has agreed to partial shipments;
- h. the Cardholder is an authorized user of the Card;
- i. CITY has actually delivered the goods or performed the services or the Cardholder has incurred the obligation in accordance with the Transaction Record;
- j. the Transaction Record is not the refinancing of a debt of the Cardholder that has been deemed uncollectible, nor for refinancing of a debt of the Cardholder in contravention of the Rules of the Card Organizations, nor for the collection of a dishonored check;
- k. CITY has complied with the Rules and all applicable federal, state and local laws;
- l. the Card is a Valid Card; and
- m. the Transaction Record is not for a transaction previously charged back to CITY.

5.9 Transaction Records. All Transaction Records and Credit Records must include:

- a. the Cardholder's name and account number (truncated on the Cardholder receipt and elsewhere as required by the Rules);
- b. CITY's name and location;
- c. the signature of the Cardholder as it appears on the appropriate space on the Card (except for PIN debit, telephone, mail or Preauthorized Orders) as required by the operating rules of the Card Organizations;
- d. the date of the transaction;
- e. a description of the merchandise sold or rented, services rendered or payment made;
- f. the total cash price of the transaction (including taxes); and
- g. any other applicable elements required by the Rules.

5.10 Merchant to Obtain Authorization. CITY agrees to submit only Card transactions for which CITY has received an Authorization. Obtaining an Authorization will not ensure payment to CITY for a Transaction Record. The fact that an Authorization is obtained by

CITY will not affect CONTRACTOR'S right thereafter to revoke Authorization of a Card transaction or to charge back the transaction to CITY. In no event will the fact that an Authorization is obtained by CITY be deemed to be our representation or warranty, either express or implied, that the particular Card transaction is in fact a valid, authorized or undisputed transaction entered into by the Cardholder.

- 5.11 Accuracy of Data Submitted. CITY will be responsible for the quality and accuracy of all data provided to CONTRACTOR. CONTRACTOR may, at its option, return to CITY for correction before processing any data submitted by CITY, which is incorrect, illegible or otherwise not in proper form. If CITY does not provide data in accordance with CONTRACTOR'S specified format and schedule, CONTRACTOR will use reasonable efforts to reschedule and process the data as promptly as possible, but related expenses incurred by CONTRACTOR will be charged to CITY.
- 5.12 No Special Conditions for Accepting Cards. CITY will not impose any special conditions not required by the Rules as a condition for accepting a Card. CITY will not require Cardholder to provide any personal information, such as home or business phone number, home or business address or driver's license number, as a condition to honoring Cards, unless permitted by the Rules. CITY will not increase the price of goods or services for a Card transaction or impose any fee for the service of accepting a Card except as allowed by the Rules. CITY may charge a convenience or service fee for a card transaction only as permitted by the Rules. If clearly disclosed to the Cardholder, CITY may offer a discount from the standard price for payments by cash.
- 5.13 Restricted or Prohibited Products and Services. If CITY sells products or services that are restricted or prohibited by CONTRACTOR, Card Organizations, or provisions of law due to the age of purchasers or otherwise such as alcoholic beverages, tobacco products, drugs, adult-content material or adult web sites, services or entertainment, gaming transactions, weapons or any other restricted products or services, CITY must comply with the Rules and all local, state and federal laws governing, restricting or prohibiting sale of those products or services through Card transactions. CITY must also implement age or other verification procedures applicable to the sale of such products or services.

## VI. AUTHORIZATIONS

- 6.1 CONTRACTOR shall designate a contacting center for CITY to obtain authorization/approval codes for all Card transactions and the CITY shall obtain authorization/approval codes for all Card transactions by contacting the center designated by CONTRACTOR.
- 6.2 CONTRACTOR shall, if agreed in advance, make authorization/approval code requests on CITY's behalf, if CITY has not otherwise provided an authorization/approval code.
- 6.3 CITY acknowledges that authorization/approval code of a Card transaction indicates only that credit is available for the Card transaction at the time the authorization is given, and it does not constitute a representation from CONTRACTOR or from the Cardholder's issuing bank that a particular Card transaction is in fact a valid or undisputed transaction entered into by the actual Cardholder or an authorized user of the Card.

- 6.4 Other provisions of this Contract notwithstanding, the CITY may, as allowed by law, collect a fee for processing the payment by credit card, and if collected, shall set the processing fee in an amount that is reasonably related to the expense incurred by the CITY in processing the payment.
- 6.5 CONTRACTOR shall not refuse to process any Transaction Data presented by CITY, unless the preparation of the Transaction Data is in violation of this Contract.

## VII. PRESENTMENT (DEPOSIT) OF TRANSACTIONS

- 7.1 CONTRACTOR will provide CITY with a sufficient quantity of merchant account numbers, which will be used to identify CITY's separate locations or divisions.
- 7.2 Merchant Locations. Upon execution of this Contract, CITY will provide CONTRACTOR with a complete list of all CITY's locations in the United States where CITY desires to accept Cards, with correct and complete mailing addresses and complete telephone numbers, in location number order. CITY will provide an updated list as changes occur.
- 7.3 Delivery of Transaction Records. CITY will electronically deliver, or when authorized in writing by CONTRACTOR, physically deliver to CONTRACTOR Transaction Records and Credit Records for all Card transactions to be processed and settled under this Contract in accordance with the Fee Schedule, but in no event later than the fifth calendar day or third Banking Day (whichever is earlier) after completing a Transaction Record, except to the extent a longer time is allowed by the Card Organization Rules, or a shorter time is required such as for transactions through Debit Networks. Fees applicable to Card transactions are set forth on the Fee Schedule. Faster delivery times and different authorization and delivery methods may be required by the Card Organizations to qualify for lower rates. Any transactions submitted on any day after the applicable cut-off time specified above shall be deemed submitted on the next day.
- 7.4 Submission of Charges to Other Processors. Upon 90 days' advance written notice to CONTRACTOR, CITY may designate another party that does not have an agreement with CONTRACTOR, but that is and remains properly registered with an appropriate Card Organization that requires a direct delivery option, as CITY's agent for the direct delivery of data-captured Transaction Records to that Card Organization for clearing and settlement. CONTRACTOR'S obligation to reimburse CITY for Transaction Records submitted through CITY's agent is limited to the amount delivered by CITY's agent in the transaction clearing and settlement process and provided to CONTRACTOR through the Card Organization for CITY's account, less processing fees and other amounts due CONTRACTOR. CITY is responsible for any failure by CITY's Agent to comply with the Card Organization Rules, including, without limitation, any violation that results in a Chargeback.

### VIII. TRAVEL AND ENTERTAINMENT CARDS

- 8.1 CONTRACTOR shall, under the terms of this Contract, provide services in compliance with the terms of this Contract for the following Travel and Entertainment (T&E) Cards: American Express, Discover, Diners Club and Carte Blanche.
- 8.2 CITY shall not submit to CONTRACTOR any T&E Card transaction for processing, unless CITY has in effect a valid agreement with the respective T&E Card company. Except to the extent that CONTRACTOR provides funds settlement services for Diners Club/Carte Blanche transactions, payment of the proceeds due CITY for T&E transactions will be governed by the agreement CITY has with the respective T&E Card company, and CONTRACTOR does not bear any responsibility for their performance.
- 8.3 CONTRACTOR shall forward Transaction Data to the appropriate T&E Card company, upon CITY's transmission of T&E Card transaction's data to CONTRACTOR.
- 8.4 If CITY's agreement with T&E company requires the T&E company's consent for CONTRACTOR to perform services under this Contract, CITY is responsible for obtaining said consent.

### IX. OTHER CARDS

- 9.1 CONTRACTOR shall, under the terms of this Contract, provide services in compliance with terms of this Contract for debit cards, stored value cards, and other non-cash payment cards that CONTRACTOR agrees to process and are in CONTRACTOR's formats. (Only the Cards covered under Section 9.1 herein are collectively referred to as "Other Cards", for purposes of Section 9, herein.)
- 9.2 CONTRACTOR shall forward Transaction Data to the appropriate "Other Cards" company, upon CITY's transmission of "Other Cards" transaction's data to CONTRACTOR.

### X. SETTLEMENT OF TRANSACTION RECORDS

- 10.1 Deposit Account and Its Operation. CITY will designate and maintain a Deposit Account with CONTRACTOR or a financial institution specified by CITY and acceptable to CONTRACTOR for the purposes of settling transactions under this Contract. If the Deposit Account is with CONTRACTOR, in the absence of any other written agreement with CONTRACTOR, the standard terms and conditions that apply to CONTRACTOR'S deposit accounts of the same type will apply. As amounts become payable to CITY or to CONTRACTOR under this Contract, CONTRACTOR may, unless otherwise agreed, make payments to or receive payments from CITY by crediting or debiting the Deposit Account without prior notice. If CITY does not maintain a Deposit Account with CONTRACTOR, payments between CITY and CONTRACTOR must be made in a manner satisfactory to CONTRACTOR. If CITY does not maintain sufficient balances

in the Deposit Account to cover amounts owing under this Contract, CITY must immediately pay all such amounts directly to CONTRACTOR, and if CITY does not do so, at CONTRACTOR'S discretion CONTRACTOR may cease processing additional Card transactions until the amounts due are paid.

CONTRACTOR will initiate a transfer of settlement funds to CITY as set forth in Sections 10.2 and 10.3 below. Except as specifically provided in the Application and the Fee Schedule, CONTRACTOR has no responsibility for settlement of CITY's transactions involving Cards other than those associated with the Card Organizations covered by this Contract. CONTRACTOR will not be liable for any delays in receipt of settlement funds or errors in credits or debits to the Deposit Account that are caused by entities other than CONTRACTOR, including but not limited to, delays or errors of any Card Organization or any financial institution other than CONTRACTOR that is used by CITY to receive settlement funds pursuant to this Contract.

- 10.2 All settlements to CITY for Transaction Records will be based upon gross sales, minus credits, refunds, adjustments, applicable fees, Chargebacks, and any other amounts then due from CITY to CONTRACTOR. All credits to CITY's Deposit Account or other payments to CITY are provisional and are subject to CONTRACTOR'S final audit and confirmation, to Chargeback and similar rights accorded to Card issuers by the operating rules of the Card Organizations and to any other obligations owed by CITY to CONTRACTOR.
- 10.3 Except as otherwise set forth in this Contract, if CONTRACTOR receives CITY's sales records or other transaction records by the applicable cut off time established by CONTRACTOR, CONTRACTOR will initiate a transfer of applicable settlement funds received from the Card Organizations, less any monies owed CONTRACTOR, through the ACH to CITY's Settlement Account once CONTRACTOR receive said funds from the Card Organizations; this will generally occur by 8:00 P.M. Eastern time on the following banking day after CONTRACTOR processes the applicable transactions.
- 10.4 This Contract is a contract whereby CONTRACTOR is extending financial accommodations to CITY within the meaning of Section 365(c) of the Bankruptcy Code. CITY's right to receive any amounts due or to become due from CONTRACTOR is expressly subject and subordinate to the Chargeback, setoff, lien, security interest and CONTRACTOR'S rights to withhold settlement funds under this Contract, without regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement funds rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

## **XI. PAYMENT OF FEES, FINES, ASSESSMENTS, PENALTIES AND OTHER CHARGES; DUTY TO EXAMINE STATEMENTS OF ACCOUNTS**

- 11.1 Fees and Card Organization Charges. CITY will pay to CONTRACTOR all the fees and charges for the services provided hereunder calculated pursuant to and due at the times specified by CONTRACTOR, which may include fees related to equipment and other services related to Card transaction processing. Fees will be charged for all authorizations, whether or not approved, all Transaction Records submitted for

processing, all Credit Records and all Chargebacks determined to be valid under Card Organization procedures.

- 11.2 Card Organization Fines, Assessments and Penalties. CITY will pay to CONTRACTOR all assessments, fines, penalties, fees, Card issuer reimbursements and similar charges imposed by Card Organizations on CONTRACTOR, directly related to CITY's Card transactions or based on CITY's actions or failure to act. The Parties agree that this provision is not part of the consideration for this Contract, and should this provision be deemed not permitted by law, it is the Parties' desire that this Contract not be declared void, but that, rather, the Contract be construed in accordance with Section 38.1 below.
- 11.3 Chargeback Fees and Payments of Chargebacks. CITY will pay the amount of every Chargeback submitted to CITY. Each fee related to a Chargeback and each Chargeback is immediately payable by CITY.
- 11.4 Payment of Fees and Other Charges. CONTRACTOR may debit the Deposit Account or withhold from amounts otherwise due to CITY from CONTRACTOR all amounts due under this Section 11 or otherwise owed by CITY to CONTRACTOR under this Contract. In the event there is an insufficient balance in the Deposit Account, CONTRACTOR may, without notice or demand, withdraw such amount owed from the Reserve Account, the Deposit Account or any other account CITY maintain with CONTRACTOR. In the event there are insufficient funds in CITY's Deposit Account, Reserve Account or other accounts with CONTRACTOR available to be debited, CITY agrees to pay the amount of any deficiency immediately to CONTRACTOR upon demand.
- 11.5 Changes in Amount of Fees. CITY acknowledges that the fees stated on the Fee Schedule provided with this Contract are based, in part, on fees set by Card Organizations and in effect at the time the parties enter into this Contract. The fees set by the Card Organizations may change from time to time during the term of this Contract to reflect increases or decreases by Associations in interchange, assessment or other Association fees and charges, to pass through increases charged by third parties, or to pass through any increases resulting from compliance with applicable laws, regulations, orders from courts of competent jurisdiction, or Association requirements. CONTRACTOR will use reasonable efforts to give CITY at least thirty (30) days' advance notice of any change in such fees. CITY will be responsible for paying any increased fees as of the effective date of any notice.
- 11.6 Duty to Review Statements. CITY must promptly and carefully review CONTRACTOR'S statements provided or made available to CITY reflecting Card transaction activity and activity in the Deposit Account and Reserve Account.
- 11.7 Duty to Notify Bank of Adjustments. If CITY believe any adjustments are needed with respect to any debits or credits effected by CONTRACTOR with respect to CITY's Deposit Account for any amounts due to or due from CITY, or if CITY has any other questions or concerns regarding CITY's Card transactions that are processed and settled by CONTRACTOR or regarding any statement or report provided by CONTRACTOR, CITY must notify CONTRACTOR in writing within ninety (90) days after such debit or credit is effected, such transaction is processed and settled, or such report is provided. If CITY fails to notify CONTRACTOR within such time frame, CONTRACTOR will not be required to investigate the matter or effect any related adjustment, absent any willful

misconduct by CONTRACTOR. If CITY notifies CONTRACTOR after such time period, CONTRACTOR may, in CONTRACTOR'S discretion and at CITY's cost, investigate the matter addressed in CITY's notice, but CONTRACTOR will not have any liability to effect any related adjustment absent any willful misconduct by CONTRACTOR.

## **XII. TRAINING AND IMPLEMENTATION PLAN**

- 12.1 CONTRACTOR shall provide initial training to CITY's employees involved in merchant banking activities at times between 7:00 a.m. and 10:00 p.m. central time as scheduled at CITY's convenience. In addition, in person training will be provided on an as necessary basis, at no cost to CITY.
- 12.2 CONTRACTOR will provide an adequate number of setup kits to furnish one kit for each CITY location. These kits will include new merchant number information, help desk contact information, processing guideline information, backup credit and charge slips, MasterCard/Visa stickers and tent signs, and such additional information as may be reasonably required by CITY.
- 12.3 CONTRACTOR shall provide ongoing training by assignment of one of its specialized account managers to handle CITY's account, and this person shall be available on a twenty-four (24) hour and seven (7) day per week basis to address operational questions or ongoing training as needed.
- 12.4 The account manager shall visit CITY at least once each quarter during the term of this Contract, to update CITY on pertinent issues. All ongoing training services shall be provided by CONTRACTOR at no cost to CITY.
- 12.5 CONTRACTOR shall provide customer service/technical support to CITY during the term of this Contract by assigning (i) a Merchant Card sales specialist, (ii) a dedicated account manager, (iii) a designated customer service representative and (iv) a chargeback/retrieval team to CITY's account, to address the day-to-day needs of CITY. CONTRACTOR will also provide the services of the BA Merchant Services support help desk to assist CITY with questions or problems that arise during the term of this Contract.
- 12.6 CONTRACTOR will review, develop and document implementation timelines and deliverables that are reasonably acceptable to CITY and that will be contained in a detailed, customized Implementation Plan. CONTRACTOR will utilize its standard project management methodology to manage the implementation of CITY's credit card acceptance program, which will consist of four (4) phases: 1) business assessment; 2) design; 3) development; and 4) implementation. The entire Implementation Plan shall be completed not later than Friday, May 25, 2007.
- 12.7 CONTRACTOR shall allow for multiple transaction testing prior to final implementation on June 30, 2007, at no cost to the CITY.

- 12.8 CITY's implementation must be completed and the CITY's merchant banking services must be fully operational by June 30, 2007.

### **XIII. TERM; EVENTS OF DEFAULT; TERMINATION**

- 13.1 In addition, if any of the following events (each a "Default") occurs, CONTRACTOR may terminate this Contract immediately without advance notice and exercise all of CONTRACTOR'S other rights and remedies under this Contract and applicable law: (i) a material adverse change in CITY's business, financial condition, business procedures, products or services, a sale of all or a substantial portion of CITY's assets, or a change in control of CITY's business (directly or indirectly) that may have a material negative financial impact on CONTRACTOR, in CONTRACTOR's reasonable discretion; (ii) irregular Card sales, excessive Chargebacks, illegal activity or any other circumstances which, in CONTRACTOR'S discretion, may increase CONTRACTOR'S potential exposure for CITY's Chargebacks or otherwise present a financial or security risk to CONTRACTOR; (iii) a default by CITY in any material respect in the performance or observance of any term, covenant, condition or agreement in this Contract, or in any other agreement with CONTRACTOR, including the non-payment of any fees due to CONTRACTOR, that is not cured by CITY within thirty (30) days following receipt of notice of such default from CONTRACTOR; (iv) any non-compliance by CITY or CONTRACTOR with the terms of the Contract or the Rules, or any reasonable belief by CONTRACTOR, as applicable, that CITY may fail to comply with the terms of the Contract, which failure would constitute a substantial risk to CONTRACTOR, that is not cured by CITY within thirty (30) days following receipt of notice of such default from CONTRACTOR, (v) CITY experiences a data security compromise, (vi) there is an overdraft for five (5) consecutive days in CITY's Settlement Account, (vii) any guaranty is revoked, (viii) CITY's business name and/or the name of the CITY is listed on the MATCH (Membership Alert To Control High Risk Merchants) System and/or other security/credit alert systems, (ix) CITY has been characterized as "high risk" under the Rules of a Card Organization for reasons including, but not limited to, fraud, counterfeit transactions, prohibited Card transactions, excessive Chargebacks, highly suspect activity or non-payment of fees, or (x) CITY files a voluntary petition or complaint seeking relief under any federal or state Bankruptcy or other debt relief statute, an involuntary petition under any federal or state bankruptcy or other debt relief statute is filed against CITY, CITY becomes unable to pay CITY's debts or trade obligations as they become due, or CITY makes a general assignment for the benefit of creditors. If an order of relief is entered against CITY in a case commenced under Title 11 of the United States Code and CITY is given the right to assume or reject this Contract, CITY must do so within sixty (60) days after the entry of such order of relief; if CITY fails to do so, CONTRACTOR may terminate this Contract immediately upon written notice to CITY.
- 13.2 Suspension of Payments. Without exercising and without waiving any right of termination, establishment of reserve, or any other right or remedy contained elsewhere in this Contract, CONTRACTOR may, immediately without prior notice, and as an alternative or supplement to the remedies of Section 13.1, upon the occurrence of an Event of Default set forth in Section 13.1, change processing or payment terms to suspend for any reasonable period of time required credits and other payments due or to

become due to CITY pursuant to this Contract. Should processing or payment terms be changed, CONTRACTOR will notify CITY in writing within three (3) Business Days after effecting a suspension of credits or other payments, stating the reason for such suspension. To the extent not used to pay CONTRACTOR immediately for any amounts due caused by an Event of Default by CITY, the amounts withheld will be deposited into the Reserve Account. CONTRACTOR will not be liable to CITY for any direct or consequential damages CITY may suffer as a result of the suspension of payments.

- 13.3 If any Event of Default will have occurred and be continuing, CONTRACTOR may, exercise all of CONTRACTOR'S rights and remedies under applicable law, including, without limitation, exercising CONTRACTOR'S rights under Section 11 and Section 12.
- 13.4 Provisions Surviving Termination. The provisions governing processing and settlement of Card transactions, all related adjustments, fees and other amounts due from CITY, the resolution of any related Chargebacks, disputes or other issues involving Card transactions, compromise or disclosure of Cardholder Data and liability arising out of CITY's breach of this Contract will continue to apply even after termination of this Contract, until all Card transactions made prior to the termination are settled or resolved. In addition to the provisions of each Section that by its terms indicate survival after termination of this Contract, the provisions of Sections 5.8, 11, 13, 16, 17.5, 24.1, 43, and 46 of this Contract will survive any termination. Upon termination CITY agrees immediately to send CONTRACTOR all the data relating to Card transactions made up to the date of termination. CONTRACTOR will not be liable to CITY for any direct or consequential damages CITY may suffer as a result of the suspension of payments.
- 13.5 High Risk Determination. If this Contract is terminated due to CITY being characterized as "high risk" under the operating rules of any Card Organization as set forth in Section 13.1 above, CITY acknowledges that CONTRACTOR may be required or may elect to report CITY's business name and the names of CITY's principals together with other identifying information to the MATCH (Membership Alert To Control High Risk Merchants) System and other security/credit alert systems. CONTRACTOR will not be liable for any claims that arise as a result of such reporting.
- 13.6 Liability Following Termination. After any termination of this Contract, CITY will continue to bear total responsibility for all Chargebacks, credits and adjustments resulting from transactions processed pursuant to this Contract and all other amounts then due or which thereafter may become due to CONTRACTOR under this Contract or which may be due at such termination or thereafter to either CONTRACTOR or any of CONTRACTOR'S subsidiaries for any related equipment or related services. In connection with any termination, a Reserve Account will be established and maintained on CITY's behalf pursuant to this Contract."

#### **XIV. INDEPENDENT CONTRACTOR**

- 14.1 It is expressly understood and agreed that CONTRACTOR is and shall be deemed to be an independent CONTRACTOR, responsible for its respective acts or omissions, and the CITY shall in no capacity be responsible therefor. Neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

## **XV. SUBCONTRACTING**

- 15.1 It is the CITY's understanding, and this Contract is made in reliance thereon, that CONTRACTOR, in the performance of services required hereunder, will use the following subcontractors.
- 15.2 Any deviations from the subcontractor list under Section 14.1 herein, whether in the form of deletions, additions or substitutions, shall be approved by CITY through the Department of Finance, by the Director of Finance, in writing, prior to the provisions of any services by subcontractor.
- 15.3 Any work or services approved for subcontracting herein shall be subcontracted only by written Contract or agreement, and unless specific waiver is granted in writing by CITY, subcontractor shall be subject to each and every provision of this Contract. Compliance by subcontractors with this Contract shall be the sole responsibility of CONTRACTOR.
- 15.4 CITY's approval of a subcontract notwithstanding, CITY shall not be obligated to any third party, including any subcontractor retained by CONTRACTOR, for payment of any work or services performed under this Contract, or to provide any work or services as compensation for any work or services performed under this Contract.

## **XVI. CONFIDENTIALITY**

- 16.1 Agreement, Rules and Business Information. CITY and CONTRACTOR will treat this Contract, the Rules and any information supplied or otherwise made accessible by the other party as confidential (the "Confidential Information") and will not disclose the same to any third parties, provided, however, that these restrictions do not apply to information: (a) rightfully obtained on a non-confidential basis from an entity or person other than a party to this Contract and its agents and representatives, which entity or person was not subject to a duty of confidentiality, (b) rightfully and independently known by CITY or CONTRACTOR on a non-confidential basis prior to its disclosure by the other party or a Card Organization or (c) generally available to the public other than through any disclosure by or fault of either party or their respective agents or representatives.
- 16.2 Cardholder Data. In addition to the information security requirements below, except pursuant to a court or governmental agency request, subpoena or order, neither CITY nor CONTRACTOR will use, store, disclose, sell or disseminate any Cardholder Data obtained in connection with a Card transaction except in accordance with the Rules, as is necessary for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, retrieval requests or similar issues involving Card transactions, and except that CONTRACTOR may use any Cardholder Data for purposes associated with CONTRACTOR'S role as a Card issuer if such Cardholder Data is derived from a Card Transaction in which the Card used was issued by CONTRACTOR. CITY will promptly advise the State or its designated agent of all requests made to CITY for information described above relating to EBT Card transactions. Further, in accordance with state and federal law, CONTRACTOR may participate in sharing

Cardholder Data among CONTRACTOR'S affiliates, other financial institutions, regulatory authorities, law enforcement agencies and any other entities authorized by such law. In addition, CONTRACTOR may participate in sharing Cardholder Data with any Card Organization or its designee at the request of the Card Organization. If CITY provide and/or issue EBT Benefits in more than one State pursuant to this Contract, the laws of the State in which the Benefits were issued will apply to information arising out of that transaction. Additionally, CITY must comply and must ensure that any and all of its third parties engaged by CITY ("Merchant Provider(s)") comply with all Association Rules regarding the security of Cardholder data and must have proper security measures in place for the protection of Cardholder data. Any fees, fines or penalties from non-compliance shall be passed through to CITY. During any term of this Contract, CITY shall immediately notify CONTRACTOR of any suspected or confirmed loss or theft of any transaction information, including any loss or theft from Merchant Provider. In addition, CITY must provide and must ensure that Merchant Provider provides reasonable access to their respective locations to an Association or independent third party to verify CITY's and the Merchant Provider's ability to prevent future security breaches in a manner consistent with the requirements of any current or future Association Rules. In accordance with state and federal law, CONTRACTOR may participate in sharing relevant information among other financial institutions, regulatory authorities, law enforcement agencies and any other entities authorized by such law.

## **XVII. RECORDS**

- 17.1 CONTRACTOR and its subcontractors, if any, shall properly, accurately and completely retain all books, data, finished or unfinished documents and/or reports, charts, software, and any other documentation generated pursuant to the performance of services hereunder, in conformance with the mandatory minimum retention periods mandated by Local Schedule GR, Texas State Library and Archives Commission, adopted by the CITY pursuant to Ordinance No. 72054, or any other applicable law.
- 17.2 Upon reasonable advance notice, CONTRACTOR shall make all records, books and supporting documents, pertaining to services performed under this Contract, available to CITY at all reasonable times and as often as CITY may deem necessary during the entire term of the Contract, including any extension or renewal hereof, for purposes of accounting and audit inspections by CITY. CITY and its designated representatives shall have the right to examine, audit, inspect, and/or make copies of any said documents.
- 17.3 CONTRACTOR shall immediately notify CITY of any requests, by a third party, for information pertaining to documentation and records obtained and/or generated under the Contract. As such, CONTRACTOR understands and agrees that CITY will process and handle all such requests, except retrieval requests and requests for Chargeback information under the Association Rules.
- 17.4 CITY shall own the copyright of whatever nature or extent and in all media whatsoever, to any documents and/or records produced through the expenditure of public funds as provided by Section 201.005, Texas Local Government Code. CONTRACTOR and its

employees, officers and agents, if any, shall be responsible for furnishing appropriate documentation confirming and/or transferring such copyright ownership in and to the CITY.

- 17.5 Unless prohibited by the Rules or any applicable state or federal law or regulation, CITY will retain legible images (on microfilm or otherwise) or legible copies of CITY's Transaction Records, Cardholder consents for Preauthorized Orders and Credit Records for a period of at least eighteen (18) months from the date of the transaction or such other longer period as may be required by law or the Rules. CITY's obligation to retain records does not provide authority for CITY to retain Card magnetic stripe data.

CITY will submit to CONTRACTOR a legible copy of a Transaction Record, Cardholder consent for a Preauthorized Order or Credit Record if any Card issuer requests such copy. CITY's deadline for providing to CONTRACTOR a legible copy of the requested Transaction Record, Cardholder consent for a Preauthorized Order or Credit Record is ten (10) days after the date of the Card issuer's retrieval request, or as specified in the notice from CONTRACTOR.

- 17.6 CONTRACTOR will send CITY any Retrieval Request that CONTRACTOR cannot satisfy with the information CONTRACTOR has on file concerning any Card sale. In response, CITY must provide to CONTRACTOR in writing by certified or overnight mail or by confirmed fax (or by other means as agreed by CONTRACTOR) the resolution of CITY's investigation of such Retrieval Request and include legible copies of any documentation required by the Retrieval Request within seven business days after CONTRACTOR sends it to CITY (or such shorter time as the Association Rules may require of which CONTRACTOR notifies CITY). Once CONTRACTOR receives CITY's response, CONTRACTOR will take the appropriate steps in a timely manner to reduce the probability of the Cardholder's bank sending an unjustified Chargeback. CITY acknowledges that its failure to fulfill a Retrieval Request in accordance with Association Rules may result in an irreversible Chargeback.

### **XVIII. SOFTWARE/HARDWARE**

- 18.1 CONTRACTOR must provide software and hardware necessary to perform services hereunder at the agreed price.
- 18.2 Except for the hardware to be provided to CITY by CONTRACTOR at no cost to CITY under the provisions of Section 4.3 of this Contract, CITY agrees to purchase from CONTRACTOR, consistent with the prices listed under Exhibit I, the hardware required in each CITY Card site location, necessary for CONTRACTOR to effect services hereunder, and CONTRACTOR agrees to provide and/or facilitate the purchasing of said hardware throughout the term of the Contract.
- 18.3 CONTRACTOR agrees that all equipment prices listed in the Pricing Document (attached hereto and incorporated herein by reference as Exhibit I) shall remain constant throughout the term of this Contract.

- 18.4 CONTRACTOR must provide CITY, at no additional cost to CITY, with all software necessary for CONTRACTOR to effect services hereunder. Additional functionality may require additional software at a cost to CITY.
- 18.5 CONTRACTOR must provide CITY with manufacturer's software and hardware warranties at time of purchase.
- 18.6 CONTRACTOR must install all software and hardware provided and/or purchased under this Contract, at no additional cost to CITY.
- 18.7 CONTRACTOR must service and/or replace any broken hardware and/or inoperative software not later than the end of the next business day after the CITY reports the problem.
- 18.8 CONTRACTOR must acknowledge all equipment warranties and charge the respective manufacturer warrantor for any service fees incurred thereon.
- 18.9 CONTRACTOR must charge the CITY in accordance with the service billing rates attached hereto and incorporated by reference as Exhibit III, for the performance of service on hardware equipment not covered under warranty.

#### **XIX. LICENSING/COPYRIGHT**

- 19.1 CONTRACTOR shall retain all ownership and copyright interest in and to any all software, computer programs, related documentation, technology, know how and processes developed by CONTRACTOR, which has not been specifically designed and/or manufactured for CITY during the provision of services hereof.
- 19.2 CONTRACTOR grants CITY a non-exclusive license to use the Software for the limited purposes of performing under this Contract.
- 19.3 CITY acknowledges that the license granted herein is limited to CITY's own use exclusively and that CITY does not have the right to sub-license any of the software in either its original or modified form. Unless otherwise provided in a separate agreement between CITY and CONTRACTOR, any software or machinery provided by CONTRACTOR but not developed by CONTRACTOR, is being licensed or purchased by CITY directly from the manufacturer or developer of such machinery or software.
- 19.4 CITY shall not give any third-party, except CITY's employees, access to the software without CONTRACTOR's prior written consent.

#### **XX. REPRESENTATIONS MADE BY CITY**

- 20.1 CITY is a home-rule municipality operating as such under the Texas Constitution and laws of the State of Texas and has full legal right, power and authority to enter into this Contract; to adopt the Ordinance authorizing the same, and to carry out and consummate

the transaction relating to this Contract; and to carry out and consummate all other transactions contemplated under this Contract.

## **XXI. REPRESENTATIONS MADE BY CONTRACTOR**

21.1 CONTRACTOR covenants, agrees and represents to CITY that:

21.1.01 CONTRACTOR is a duly formed company, providing credit and debit card authorization and capture services, bankcard settlement processing and third-party processing for financial institutions and independent sales organizations.

21.1.02 CONTRACTOR is qualified to provide merchant banking services to CITY.

21.1.03 CONTRACTOR is the owner or licensee of the software contemplated under this Contract, and, as such, is authorized to issue a license or sub-license thereto.

21.1.04 CONTRACTOR represents and warrants that the use of the software and hardware contemplated under this Contract, during the duration of this Contract, does not violate any copyright, patent trade secret, or trademarks of any person or entity.

21.1.05 CONTRACTOR shall defend (or settle), at CONTRACTOR's sole expense, any and all claims emanating from the infringement of a trademark, copyright, trade secret, or patent, on any claim arising out of the software and hardware used pursuant to the provision of services under this Contract.

21.1.06 If CITY's use of software and/or hardware is prevented and/or prohibited by any legal process, CONTRACTOR shall procure for CITY the right to continue the use of said software and/or hardware; or CONTRACTOR shall modify the software and/or hardware so that it is no longer infringing; or CONTRACTOR shall replace the software and/or hardware with non-infringing software and/or hardware of equal or superior functional capability, at no additional cost to CITY.

## **XXII. CONFLICT OF INTEREST**

22.1 CONTRACTOR acknowledges that CONTRACTOR is informed that the CITY of San Antonio CITY Charter prohibits a contract between CITY and any local public official, such as a CITY officer or employee, and that the prohibition extends to an officer and employee of CITY agencies such as CITY owned utilities and CITY boards or commissions.

- 22.2 CONTRACTOR certifies, and this Contract is made in reliance thereon, that neither it, its individual officers, employees or agents, nor any person having a financial interest as herein prescribed in this Contract, is an officer or employee of the CITY, or, to the best of CONTRACTOR's knowledge, any of its agencies.
- 22.3 CONTRACTOR has tendered to CITY a Disclosure Statement, in compliance with the CITY of San Antonio's Ethics Ordinance.

### **XXIII. INSURANCE**

- 23.1 CONTRACTOR shall furnish a completed Certificate of Insurance to CITY in compliance with notice requirements imposed under this Section 23.1 of this Contract. Such Certificate of Insurance shall be clearly labeled Merchant Banking Services in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original Certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this Contract until such Certificate shall have been delivered to the CITY and no officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

CITY reserves the right to review these insurance requirements during the effective period of this Contract and any extension or renewal thereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding the Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

CONTRACTOR's financial integrity is of vital interest to CITY, therefore, subject to CONTRACTOR's right to maintain reasonable deductibles, CONTRACTOR shall obtain and maintain in full force and effect, at CONTRACTOR's sole cost and expense, for the duration of this Contract, including any extension or renewal hereof, insurance coverages, written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-(vii) or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Personal Injury Liability d. Contractual Liability	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Excess or Umbrella Liability Coverage
4. Professional Liability	\$5,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
5. Commercial Crime/Fidelity Bond	Amount of Contract

CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City if a claim is filed.

CONTRACTOR agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

1. Name the CITY and its officials, employees, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
2. Provide for an endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy;

CONTRACTOR will endeavor to mail thirty (30) days written advanced notice for policy cancellation and ten (10) day written advanced notice for policy non-renewal. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following addresses:

City of San Antonio
Attn: Finance Department – Financial Management Division
Ref: Merchant Banking Services
P.O. Box 839966
San Antonio, Texas 78283-3966

If CONTRACTOR fails to maintain the aforementioned insurance or fails to secure and maintain the aforementioned endorsements, City shall have the right to order CONTRACTOR to stop work under this Contract, and/or withhold any payment(s), which

becomes due to CONTRACTOR thereunder until CONTRACTOR demonstrates compliance with the requirements hereof.

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 subcontractors' performance of the work covered under this Contract. CONTRACTOR's insurance coverages are primary.

CONTRACTOR reserves the right to obtain all insurance required in this contract through a program of self insurance and provide notification by the way of a self insurance letter to the CITY.

#### **XXIV. INDEMNITY**

24.1 **CONTRACTOR, whose work product is the subject of this Contract, agrees to indemnify and hold CITY, its elected officials, officers and employees harmless against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may arise out of or be occasioned or caused by CONTRACTOR's negligent act, error or omission of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. In the event CONTRACTOR and CITY are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to CITY under Texas law and without waiving any defenses of the parties under Texas law.**

**CONTRACTOR shall advise CITY in writing within 24 hours of any claim or demand against CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this CONTRACT.**

**The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

**XXV. INCORPORATION OF EXHIBITS**

25.1 All Exhibits referred to in this Contract are intended to be, and are hereby, specifically made a part of this Contract. Said Exhibits are as follows:

Pricing	Exhibit I
CITY's Current Card Site Locations	Exhibit II
Operating Guide	Exhibit III

**XXVI. CHANGES AND AMENDMENTS**

- 26.1 Except when the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be effected by written amendment, executed by both CITY and CONTRACTOR.
- 26.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or any laws applicable hereto may occur during the term of this Contract, and that any such changes shall be automatically incorporated into this Contract without prior written amendment thereto, and shall become a part hereof, as of the effective date of the rule, regulation or law.
- 26.3 CONTRACTOR may add, decrease, amend, change or modify the Operating Guide Procedures, as allowed pursuant to Section 5.7 herein.
- 26.4 No modification or alteration of the procedural or operational aspects of this Contract shall be binding unless modification or alteration thereof is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

**XXVII. WAIVERS**

27.1 No term or condition of this Contract may be waived unless both parties sign a written waiver thereof.

**XXVIII. NOTICES**

28.1 For purposes of this Contract, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

**CITY**  
City of San Antonio  
Attn: Ben Gorzell, Jr., CPA  
Department of Finance  
P.O. Box 839966  
San Antonio, Texas 78283-3966

**CONTRACTOR**  
BA Merchant Services  
Attn: Steve Shumate  
800 Market St., MO1-800-12-20  
St. Louis, MO 63101

## **XXIX. CITY'S DEPOSITORY**

- 29.1 CITY, through its current designated depository financial institution, shall assign a depository account for the transferring of funds during the performance of services under this Contract.
- 29.2 CITY is informed and hereby acknowledges that its current designated depository financial institution is a member of the Automated Clearing House ("ACH") system and the Federal Reserve wire system.
- 29.3 CITY has the right to change depository and/or depository account, and must comply with the requirements set in Section 10, herein.

## **XXX. LEGAL AUTHORITY**

- 30.1 The person signing on behalf of CONTRACTOR represents, warrants and certifies that he has full legal authority to execute this Contract on behalf of CONTRACTOR and has authority to bind CONTRACTOR to all of the terms, conditions, provisions and obligations contained herein.

## **XXXI. ASSIGNMENT OF INTEREST IN CONTRACT**

- 31.1 Neither party shall subcontract or assign any interest and/or portion of its performance under this Contract without the prior written consent of the other party, provided however that an assignment by CONTRACTOR to an affiliate or parent merely for purposes of corporate restructuring shall not be deemed an assignment under this Section. Any purported assignment made without the other parties' prior written consent is void.

## **XXXII. SUCCESSORS AND ASSIGNS**

- 32.1 This Contract shall be binding on and inure to the benefits of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and their assigns, except as otherwise expressly provided for herein.

## **XXXIII. LICENSES/ CERTIFICATIONS**

- 33.1 CONTRACTOR warrants and certifies that CONTRACTOR and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

**XXXIV. FORCE MAJEURE**

- 34.1 Neither party will be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications or utility or power failures, labor strife, riots, war, nonperformance of vendors or suppliers, acts of God, or other causes over which the respective party has no reasonable control.

**XXXV. COMPLIANCE**

- 35.1 While in the performance of all rights, duties and obligations hereunder, CONTRACTOR agrees to comply with all applicable Federal, State and Local laws, rules and regulations.

**XXXVI. GOVERNING LAW**

- 36.1 All actions, claims or demands brought against CITY shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are performable in Bexar County, Texas.

**XXXVII. VENUE**

- 37.1 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the CITY of San Antonio, County of Bexar, Texas.

**XXXVIII. SEVERABILITY**

- 38.1 If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the CITY Charter, CITY Code or City Ordinances of the CITY of San Antonio, Texas, then, and in that event, it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof, and the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties hereto to add a new clause, as similar in terms and content as necessary to legally valid and enforceable, and make it a part of the Contract for each provision held invalid, illegal or unenforceable. Any provision of this Contract that may be construed invalid or illegal shall fall by itself, but shall not have the effect of invalidating any of the other provisions of this Contract.

**XXXIX. GENDER**

- 39.1 Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

## **XL. CAPTIONS**

- 40.1 The captions contained in this Contract are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Contract.

## **XLI. WARRANTIES AND REPRESENTATIONS**

- 41.1 CONTRACTOR Warranties. CONTRACTOR represents and warrants as follows: CONTRACTOR validly exists, CONTRACTOR is in good standing and is free to enter into this Contract, and CONTRACTOR will perform CONTRACTOR'S obligations pursuant to this Contract in accordance with the laws applicable to CONTRACTOR.
- 41.2 CITY Warranties. In addition to the representations and warranties contained in Section 5.8, CITY represents and warrants, and with the submission of each Transaction Record and Credit Record reaffirms CITY's representation and warranty, as follows: CITY is validly existing, in good standing and free to enter into this Contract; CITY shall perform CITY's obligations pursuant to this Contract in accordance with the laws applicable to CITY; other information provided to CONTRACTOR in support of this Contract is true and correct; there has been no material adverse change in CITY's financial information; CITY does not do business under a trade name or style not previously disclosed to CONTRACTOR; CITY has not changed the nature of CITY's business, delivery methods or product lines in a way not previously disclosed to CONTRACTOR; and CITY has not filed a bankruptcy petition not previously disclosed to CONTRACTOR.

## **XLII. INFORMATION SECURITY**

- 42.1. Data Protection. CITY must, and must ensure that Merchant Providers, have proper security measures in place for the protection of Cardholder Data, and comply with the Card Organizations' Payment Card Industry ("PCI") Data Security Standard, which may be reflected in the Visa Cardholder Information Security Program ("CISP") and the MasterCard Site Data Protection Program ("SDP"), in addition to all other Cardholder Data security rules and regulations set forth by the Card Organizations now or in the future. Additional information regarding the CISP and SDP programs is available at the Visa web site, the MasterCard web site, and at the Payment Card Industry web site: <http://www.PCISecurityStandards.Org>. CITY must have written agreements with CITY's Merchant Providers requiring such compliance. CITY is responsible for demonstrating CITY's and Merchant Providers' compliance with the CISP, SDP and PCI programs, and providing CONTRACTOR with reasonable access to CITY's locations and ensuring Merchant Providers provide reasonable access to their locations to verify CITY's and Merchant Providers' ability to prevent security violations.
- 42.2 Controls. CITY must, and must ensure that all Merchant Providers, have, maintain, and use at all times proper controls as specified in the Rules for secure storage of, and limited access to, and must render unreadable prior to discarding, all records containing Cardholder Data, Card imprints and Cardholder signatures. CITY must not retain or store magnetic stripe or PIN data after a transaction has been authorized. If CITY stores

any electronically captured Cardholder signature, CITY may reproduce such signature only upon CONTRACTOR's request.

- 42.3 Merchant Providers. Before each Merchant Provider provides services related to this Contract to CITY, CONTRACTOR must register the Merchant Provider with applicable Card Organizations. CITY must assure that CITY and CITY's Merchant Providers: (i) comply with the registration process which can involve site inspections, background investigations, provision of financial statements, and any other information required by a Card Organization; (ii) comply with the periodic and other reporting required by a Card Organization; and (iii) comply with all applicable Rules, including without limitation, those requiring security of Cardholder Data. CITY may allow Merchant Providers access to Cardholder Data only for purposes authorized under and in conformance with the Rules. Any registration fees and any fines, assessments and other charges imposed by Card Organizations on CONTRACTOR for the actions or failure to act of Merchant Providers that are not paid in a timely manner by the Merchant Providers become CITY's obligations to CONTRACTOR under this Contract.
- 42.4 Costs. In addition to CITY's obligations as set forth in Section 11, CITY must pay CONTRACTOR promptly for all expenses or claims associated with loss, disclosure, theft and compromise of Cardholder or transaction data, including assessments, fines, losses, costs, penalties, and expenses assessed or Card issuer reimbursements required by the Rules as imposed by the Card Organizations and incurred by CONTRACTOR as a result thereof, including but not limited to Card issuer losses and any costs charged to CONTRACTOR by any Card Organization. To the extent that CONTRACTOR is provided the opportunity to contest or appeal any claim of a Card issuer or any amount imposed by a Card Organization on CONTRACTOR, which CITY is obligated to pay to CONTRACTOR under this paragraph, CITY will be given the opportunity to advise whether CITY wishes CONTRACTOR to contest or appeal any such claim, assessment, penalty or fine. The decision as to whether to contest or appeal any such matter will be a decision made jointly by the parties hereto. The Parties agree that this provision is not part of the consideration for this Contract, and should this provision be deemed not permitted by law, it is the Parties' desire that this Contract not be declared void, but that, rather, the Contract be construed in accordance with Section 38.1.
- 42.5 Issuer Costs. In addition to CITY's obligations as set forth in Section 11 and Section 42.4 above, CITY must pay CONTRACTOR promptly for all Issuer Costs, which shall be defined as all expenses related to re-issuance of new Cards as a result of loss, disclosure, theft and compromise of Cardholder Data or transaction data, made by Card issuers against CONTRACTOR apart from any claim procedures administered by Card Organizations. The Parties agree that this provision is not part of the consideration for this Contract, and should this provision be deemed not permitted by law, it is the Parties' desire that this Contract not be declared void, but that, rather, the Contract be construed in accordance with Section 38.1.
- 42.6 Notice of Data Breach. CITY will immediately notify CONTRACTOR of any suspected, or confirmed loss or theft of Cardholder or transaction information, regardless of the source, including any loss or theft from any Merchant Provider, and, at CITY's expense, will engage a certified forensic vendor acceptable to CONTRACTOR and the Card Organizations no later than 48 hours following CITY's suspected or actual discovery of such loss or theft of Cardholder Data or transaction information. Such forensic vendor

shall immediately conduct an examination of CITY's systems, procedures and records and issue a written report of its findings. CITY agrees that upon CITY's suspected or actual discovery of such loss or theft of Cardholder Data or transaction information, CITY will not alter or destroy any records related to such event. CITY agrees to maintain complete and accurate documentation regarding any modifications made to such records. CITY will share with CONTRACTOR information related to CITY's or any Card Organization's investigation related to any loss, theft or compromise of Cardholder Data or transaction data, including but not limited to forensic reports and systems audits.

- 42.7 System Scans. Upon notice to CITY, CONTRACTOR or CONTRACTOR's representative may conduct remote electronic scans of CITY's systems, similar to those conducted under the PCI Data Security Standard, to confirm compliance with the requirements of the PCI Data Security Standard/CISP/SDP programs and similar requirements of other Card Organizations. CITY must promptly cooperate with CONTRACTOR to allow the scans.

### **XLIII. EXAMINATION/AUDIT AND CORRECTIVE ACTION**

- 43.1 CONTRACTOR Rights. CONTRACTOR or CONTRACTOR'S designees shall have the right, during the term of this Contract and for one (1) year thereafter, upon a reasonable advance written notice and during normal business hours, to conduct a review of the books, records, operations and CITY's systems to determine or to verify CITY's compliance with CITY's obligations under this Contract.
- 43.2 Card Organization and Investigation. CITY will, upon reasonable prior written notice from CONTRACTOR and as directed by any Card Organization pursuant to its Rules, permit an entity acceptable to the Card Organization to examine and audit the records, operations and systems maintained by CITY relevant to that Card Organization. The scope, standards and frequency of the examinations and audits will be determined by the Card Organizations. The results, including, but not limited to any written reports of such examinations and audits, must be made available to the Card Organization and CONTRACTOR. All expenses related to such examinations and audits must be paid by CITY.
- 43.3 Remediation. CITY must promptly take corrective action acceptable to CONTRACTOR and the Card Organizations to rectify (a) any failure to comply with this Contract or any problem identified in any report, examination and audit that could reasonably be expected to have an adverse impact on CONTRACTOR, Card issuers, Card Organizations or Cardholders and (b) any control deficiencies identified in the report.
- 43.4 Regulatory Agencies. Notwithstanding anything to the contrary in Sections 12 and 42, CITY agrees to provide reasonable access during normal business hours for examination purposes to any state or federal agencies with jurisdiction over CONTRACTOR or any Card Organization, upon CONTRACTOR'S prior written request.

#### **XLIV. MONITORING CARD ACTIVITY**

- 44.1 CONTRACTOR may monitor CITY's daily Card transaction activity and may, upon reasonable grounds, divert into a Reserve Account settlement funds or temporarily suspend processing under this Contract for CITY's affected locations. Reasonable grounds will include, but not be limited to, the following:
- i. suspicious or unusual transaction activity;
  - ii. material variance in the nature of CITY's business, type of product or service sold, average transaction size, monthly volume or swiped/keyed percentages, from such representations made by CITY or patterns established by CITY;
  - iii. CITY does not obtain authorizations for transactions;
  - iv. CONTRACTOR receives excessive retrieval requests against CITY's prior activity;
  - v. excessive Chargebacks are debited against CITY's prior activity;
  - vi. CITY does not deliver product or render full service on or before the transaction date; or
  - vii. suspicious foreign card transaction.
- 44.2 If CITY's funds are diverted by CONTRACTOR or CONTRACTOR has temporarily suspended processing under this Contract, such diversion or suspension will be for any reasonable period of time required by CONTRACTOR to fully investigate CITY's account activity and determine whether CITY's suspicious, unusual or breaching conduct presents an unacceptable risk. To the extent permitted by the Rules, CONTRACTOR will maintain any funds diverted in a non-interest bearing account, which may be a commingled account. CONTRACTOR will have no liability for any losses, either direct or indirect, which CITY may attribute to any diversion of funds, or suspension of processing.

#### **XLV. RESERVE ACCOUNT; DEPOSIT ACCOUNT; SECURITY INTEREST**

- 45.1 Establishment of Reserve Account. CONTRACTOR may require CITY to establish and fund a Reserve Account (i) upon execution of this Contract; (ii) from time to time throughout the term of this Contract if so specified by CONTRACTOR; (iii) upon an Event of Default described in Section 13.1; or (iv) in connection with any termination of this Contract. Any such Reserve Account will be held in an account with CONTRACTOR and will not be subject to withdrawal by CITY. Such Reserve Account will be maintained with the banking office that CONTRACTOR designates in the minimum amount CONTRACTOR requires, to the extent permitted by the Texas Public Funds Collateral Act. If the CITY fails to establish the Reserve Account at CONTRACTOR's request, CONTRACTOR may establish one in its and the CITY's name for the benefit of CONTRACTOR, and fund it with amounts that become due to

CONTRACTOR under this Contract. The Reserve Account will be separate from the Depository Account. The standard terms and conditions that apply to CONTRACTOR's deposit accounts of the same type will apply, unless the parties agree in writing.

45.2 Reserve Account Funding In connection with termination, or an event of default described in Section 13, a Reserve Account will be established and maintained by or on CITY's behalf with (or otherwise for the benefit of) CONTRACTOR in an amount equal to:

- i. The greater of (a) the Reserve amount designated by CONTRACTOR in the Fee Schedule or (b) CONTRACTOR'S reasonable estimate of CITY's dollar volume of incoming Chargebacks for a nine-month period and CITY's credits (for returns or otherwise) for a two-month period (which may be based on actual volume during the preceding 270 days for Chargebacks and 60 days for credits or nine (9) times CITY's highest monthly dollar volume of incoming Chargebacks and two (2) times CITY's highest monthly dollar volume of credits, as determined during the most recent twelve-month period); and
- ii. in the event of any actual or suspected data security compromise such as loss, compromise, disclosure, or theft of Cardholder Data, CONTRACTOR'S estimate of all fees, assessments, fines, losses, costs, penalties, and expenses that may be imposed on CONTRACTOR by any Card Organization and owed by CITY to CONTRACTOR under this Contract prior to or following termination of this Contract, including any actual or reasonably probable losses from such loss, compromise, disclosure, or theft of Cardholder Data.

45.3 Use of Reserve Account Funds. The requirement to maintain a Reserve Account will not limit CONTRACTOR'S right to debit the Deposit Account or withhold ongoing settlement payments for recoupment for Chargebacks, potential Chargebacks, adjustments, and any other charges due hereunder, including any losses, claims, costs, expenses, fines, and assessments. CITY's funds in the Reserve Account may be used to settle Chargebacks and adjustments (whether arising before, on or after termination), and any other amounts due CONTRACTOR described in this Section 45 and any other obligations of CITY to CONTRACTOR whenever there are not sufficient funds in the Deposit Account or settlement funds due to CITY to cover such obligations. CONTRACTOR will refund any of CITY's funds remaining in the Reserve Account to CITY when CONTRACTOR reasonably believes that no further charges to such account are forthcoming, and will provide CITY with an accounting of any CITY's funds debited from or credited to such account. If CITY's funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from CITY, or if the CITY's funds in such account have been released, CITY agrees to promptly pay CONTRACTOR the amounts not so covered upon request. In connection with any termination of this Contract or the occurrence of any event set forth in Section 13 (and continuing thereafter until 280 days after termination of this Contract), CONTRACTOR may withhold any funds otherwise due to CITY or may debit funds from CITY's Deposit Account, to establish and maintain (or restore/supplement the balance of CITY's funds in) a Reserve Account containing CITY's funds equal to the amount that may be required under this Section 45. To the extent permitted by the Rules, CITY's Reserve funds required by this Section 45 may be held in a commingled Reserve Account for the Reserve funds of CONTRACTOR'S customers.

- 45.4 In the event CITY fails to establish and maintain any funds required by CONTRACTOR in a Reserve Account, such failure shall be deemed a default under Section 13 and CONTRACTOR may terminate this Contract immediately.
- 45.5 Grant of Security Interest. To secure CITY's obligations to CONTRACTOR under this Contract, CITY irrevocably grants to CONTRACTOR a lien and security interest in and to any of CITY's funds held in the escrow/security account, together with the proceeds thereof. Any such funds, money or amounts may be commingled with any other escrow/security funds of other customers of CONTRACTOR'S. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, CONTRACTOR is hereby authorized by CITY at any time, and from time to time, without demand, but upon written notice to CITY, or to any other person (any such demand being hereby expressly waived), to set off and to appropriate and to apply any and all such funds against and on account of CITY's obligations to CONTRACTOR, and their affiliates under this Contract, whether such obligations are liquidated, unliquidated, fixed, contingent, matured, or unmatured. CITY agrees to duly execute and deliver to CONTRACTOR such instruments and documents as CONTRACTOR may reasonably request to perfect and confirm the lien, security interest, right of setoff and subordination set forth in this Contract.

#### **XLVI. CHANGING THIS CONTRACT**

- 46.1 CONTRACTOR may change this Contract, the Manuals/Instructions, or other operating procedures to make any changes in the terms of this Contract necessary to comply with applicable Association Rules or applicable laws and regulations, by giving CITY at least fifteen (15) days advance notice. However, in the event of changes in the Rules or due to security or risk control reasons, certain changes may become effective on shorter notice. In addition, CONTRACTOR may from time to time notify CITY in writing or through other means of requirements that must be satisfied to qualify for various incentive programs. Any Card sales made by CITY after the effective date of such change will constitute consent to the new terms.
- 46.2 Notwithstanding the foregoing, CONTRACTOR will use reasonable efforts to notify CITY at least thirty (30) days in advance of any fee changes to reflect increases or decreases by Associations in interchange, assessment or other Association fees and charges, to pass through increases charged by third parties, or to pass through any increases resulting from compliance with applicable laws, regulations, orders from courts of competent jurisdiction, or Association requirements. Following such notification by CONTRACTOR of any amendment of the fees referenced herein and for thirty (30) days thereafter, CITY may terminate this Contract upon written notice to CONTRACTOR'S. However, any Card sales made by CITY on or after thirty-one (31) days following such notice to CITY will constitute consent to the new terms.

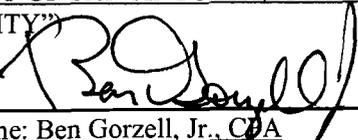
**XLVII. ENTIRE AGREEMENT**

- 47.1 This Contract, its exhibits, if any, and its authorizing ordinance constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereof and duly executed by the parties.
- 47.2 In the event of a conflict or inconsistency between the terms of this Contract, the provisions of CITY's Request for Proposal (RFP), CONTRACTOR's Proposal, or any Exhibit attached hereto and incorporated herein by reference, the terms of this Contract shall be final and binding.

EXECUTED and AGREED to this 23<sup>rd</sup> day of MAY, 2007.

CITY OF SAN ANTONIO, TEXAS  
("CITY")

By:



Name: Ben Gorzell, Jr., CFA  
(Please Print or Type)

Title: Director of Finance

Date: MAY 23, 2007

BANK OF AMERICA, N.A.  
("BANK")

By:

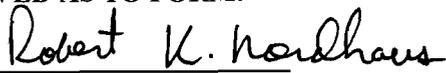


Name: Donna G. Carbone  
(Please Print or Type)

Title: Senior Vice President

Date: \_\_\_\_\_

APPROVED AS TO FORM:



Assistant City Attorney

**EXHIBIT I**

**Pricing**

**ATTACHMENT TO EXHIBIT I  
TO  
MERCHANT BANKING SERVICES CONTRACT**

**MasterCard and Visa Discount Rates and Transaction Fees**

Credit Card Interchange Level	MASTERCARD/VISA	
	Discount Rate	Transaction Fee
CPS Retail (Card Swiped-Settled in 24 hours)	1.54%	\$0.10
Check Card (Card Swiped-Settled in 24 Hours)	1.03%	\$0.15
CPS/Retail Key Entry - MCC 9311 (requires AVS ZIP match)	1.85%	\$0.10
CPS Card Not Present - MCC 9311 (requires AVS request)	1.85%	\$0.10
Visa CPS Emerging Market - MCC9211, 9222, 9399	1.43%	\$0.05
Commercial Card (T&E or without enhanced data)	2.20%	\$0.10
EIRF - MC9311 (Keyed without AVS or delayed settlement)	2.30%	\$0.10
Visa Commercial Card Standard	2.70%	\$0.10
Merit 1 (MO/TO)	1.95%	\$0.10
Merit 3 (Card Swiped-Settled in 24 hours)	1.64%	\$0.10
MasterCard Retail Key Entered (No AVS required)	1.95%	\$0.10
Standard Visa	2.70%	\$0.10
Standard MasterCard	2.75%	\$0.10
US Corporate Data Rate I (Keyed)	2.65%	\$0.10
US Corporate Data Rate II (Keyed)	2.05%	\$0.00
US Corporate Large Ticket	1.20%	\$40.00
US Corporate Standard	2.70%	\$0.10
International Electronic	1.48%	\$0.00
International Standard	2.31%	\$0.00
International Corporate, Purchasing Standard	2.26%	\$0.00
International Corporate, Purchasing - Large Ticket	0.86%	\$30.00
International Corporate Purchasing Data Rate II	1.66%	\$0.00

**Processor Fees**

	Per Transaction
Bankcard Authorization, Processing, and Settlement	\$0.10
American Express, Discover, Diners Club/Carte Blanche Authorization, Capture, and Conveyance	\$0.10
Voice Authorization	\$0.50
SCAN Check Verification Service/ELECTRONIC CHECK SERVICE (guarantee)	1.15% + \$ .40
On Line Debit Transactions	\$0.57
Address Verification Service	\$0.00
Chargeback Handling	\$10.00
Optional Wire Transfer Fee	not available
Supplies	no charge
Annual Fee	waived
Help Desk Fee	waived
Statement Fee	waived
Monthly Minimum	waived
Daily ACH Deposit	waived

**Internet Processing Fees**

Set-Up Fee	\$150.00
Monthly Fee	\$19.95
Additional Transaction Fee	\$0.10

**Miscellaneous Fees - Additional Services**

Pricing and fees for any other charges that may be incurred by the City as a result of the services requested under this RFP:	
Pin-pad Encryption Fee	\$25.00
Access.net Reporting	\$9.95 per user ID
ECS Access Fee(per merchant #)	\$10.00

**Equipment Fees**

Type of Equipment	Purchase	Monthly Rental
Hypercom T7+	NO CHARGE*	
*Bank of America Merchant Services is offering 25 Hypercom T7+ terminals at NO CHARGE.		
Additional units priced as follows: Hypercom T7+	\$ 305.00	\$ 21.95
Hypercom P1300 Pin Pads	\$ 85.00	\$ 6.00
RDM 6014 Check Imager	\$ 385.00	\$ 22.00

**EXHIBIT II**

**City's Current Card Site Locations**

**ATTACHMENT TO EXHIBIT II  
TO  
MERCHANT BANKING SERVICES CONTRACT**

	MERCHANT LOCATION	EQUIPMENT	QUANTITY
1	AIRPORT DIRECTOR'S OFFICE	Hypercom T77F	2
2	AIRPORT PARKING	Hypercom T77F	10
3	AIRPORT PARKING	INTERNET	1
4	AIRPORT POLICE OFFICE	Hypercom T77T	2
5	ALAMODOME	Hypercom T77F/ T330 P900	5
6	ANIMAL CARE SERVICES	INTERNET	1
7	ANIMAL CARE SERVICES	T330 P900	1
8	BITTERS BRUSH SITE	Eclipse Quartet	1
9	BOB ROSS COMM LINK	T330 P250/ Omni 3730 LE	2
10	BOTANICAL GARDEN	Eclipse Quartet	1
11	BRACKENRIDGE GOLF CSE	T330 P250	1
12	CALLAGHAN CLINIC	Omni 3730 LE	1
13	CARVER CENTER	Eclipse Quartet	1
14	CEDAR CREEK GOLF CSE	T330 P250	1
15	CITY STORE	PC CHARGE	2
16	COMMS & PUBLIC AFFAIRS	Omni 3730 LE	1
17	CVB	INTERNET	1
18	DEVELOPMENT SERVICES	INTERNET	1
19	ENVIRONMENTAL SVC	Eclipse Quartet	1
20	HEALTH CLINIC	OMNI 3730 LE	1
21	HEALTH FISCAL OPERATIONS	Hypercom T77T	1
22	HEALTH GOODWILL BLANCO	Omni 3730 LE	1
23	HEALTH VITAL RECORDS OFF	Hypercom T77F	1
24	IMMUNIZATION CLINIC	Eclipse Quartet	1
25	KENWOOD CLINIC	Omni 3730 LE	1
26	LAS PALMAS COMM LINK	T330 P250	1
27	MISSION DEL LAGO GOLF CSE	T330 P250	1
28	MUNICIPAL COURT	Eclipse Quartet	9
29	MUNICIPAL COURT	INTERNET	1
30	NACO PERRIN CLINIC	Omni 3730 LE	1
31	OLD HWY 90 CLINIC	Omni 3730 LE	1
32	OLMOS BASIN GOLF CSE	T330 P250	1
33	PARKS & ATHLETICS	T330 P250	1
34	PECAN VALLEY CLINIC	Omni 3730 LE	1
35	R SALINAS HEALTH CENTER	Omni 3730 LE	1
36	RIVERSIDE GOLF CSE	T330 P250	1
37	SAN PEDRO DRIVING RGE	T330 P250	1
38	SAPD VEHICLE STORAGE	OMNI 3730	1
39	SOUTH FLORES CLINIC	Omni 3730LE	1
40	SOUTH PARK COMM LINK	Hypercom T77F	1
41	SOUTHWEST BRANCH CLINIC	Omni 3730LE	1
42	TREASURY ANNEX	Eclipse Quartet	2
43	TREASURY ONE STOP DEV SVC	Eclipse Quartet/Omni 3730	3
44	TUBERCULOSIS CLINIC	Omni 3730LE	1
45	VALLEY VIEW COMM LINK	Hypercom T77T	1
46	WESTEND HEALTH CENTER	Omni 3730LE	1
47	WILLOW SPRINGS GOLF CSE	T330 P250	1
48	ZARZAMORA CLINIC	Hypercom T7 Plus	1
			76

**EXHIBIT III**

**Operating Guide**

**ATTACHMENT TO EXHIBIT III  
TO  
MERCHANT BANKING SERVICES CONTRACT**

To assist Merchant in meeting its obligation to comply with Association Rules some Associations have made relevant portions of their Association Rules available on their websites. MasterCard and Visa make some of their Rules available on websites maintained by those organizations at:

[http://www.usa.visa.com/download/business/accepting\\_visa/ops\\_risk\\_management/rules\\_for\\_visa\\_merchants.pdf?it=r4/business/accepting\\_visa/new\\_acceptance/merchant\\_responsibility%2Ehtml|Rules%20for%20Visa%20Merchants](http://www.usa.visa.com/download/business/accepting_visa/ops_risk_management/rules_for_visa_merchants.pdf?it=r4/business/accepting_visa/new_acceptance/merchant_responsibility%2Ehtml|Rules%20for%20Visa%20Merchants) and <http://www.mastercardmerchant.com>

[MasterCard Merchant Rules accessible under the Getting Started / How MasterCard Works column]

**AMENDMENT  
TO  
MERCHANT BANKING SERVICES CONTRACT**

This Amendment made this 5<sup>TH</sup> day of NOVEMBER, 2007, by and between Bank of America, N.A. ("Contractor") and the City of San Antonio, Texas ("City"), modifies, supercedes and replaces any conflicting terms contained in the Merchant Banking Services Contract which was dated on or about May 23, 2007 (the "Contract") including the Application, and any related Amendments, Addenda or Exhibits thereto by and between Contractor and City. All other provisions or terms of the Contract, Addenda, or Exhibits shall remain in full force and effect.

1. In connection with and as the result of the utilization of Global Payments Inc. as an approved subcontractor under the Contract, the Fee Schedule for the San Antonio International Airport Parking site location, which relates to any transactions processed by Global Payments Inc. through the Federal APD System, shall be incorporated into the Contract as Exhibit I.A.
2. The Fee Schedule set forth in Exhibit I.A. shall only apply to the transactions processed by Global Payments Inc. through the Federal APD System at the San Antonio International Airport Parking site location and shall not apply to transactions processed by any other component of the San Antonio International Airport.

**IN WITNESS WHEREOF**, the parties hereto have set their hand and seal on the date set forth herein below.  
**THIS AMENDMENT IS NOT BINDING OR EFFECTIVE UNTIL FULL EXECUTION BY THE PARTIES.**

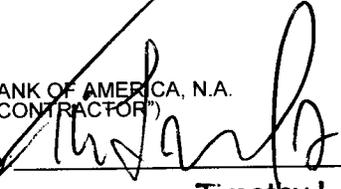
CITY OF SAN ANTONIO, TEXAS  
("CITY")

By:  Date: 11/05/07

Name: Ben Gorzell Jr.  
(Please print or type)

Title: Director of Finance

BANK OF AMERICA, N.A.  
("CONTRACTOR")

By:  Date: 12/04/2007

Name: Timothy L. Munto  
(Please print or type) Senior Vice President

Title: Bank of America, NA

**BA Merchant Services**

**MERCHANT SERVICES AGREEMENT**

Fee Schedule

**San Antonio Airport Parking SAT**

**June 19, 2007**

Legal business name (as it appears on the Application)

Effective Date

**BA Merchant Services Processing Fees for:**

Interchange category	See Attached	Visa Association Fees	<u>0.0925%</u>
Discount rate of Visa	<u>0.00%</u>	MasterCard Association Fees	<u>0.095%</u>
Discount rate of MasterCard	<u>0.00%</u>	Voice Auth Address Verification Service	<u>\$0.50</u> per call
BAMS/Bank processing fee	<u>\$0.14</u>	PIN Debit Card Fees	_____ per transaction plus
Per Item Authorization Fee <sup>1</sup>	<u>\$0.00</u>		_____ of monthly sales
		Check Warranty Fees <sup>2</sup>	_____ minimum \$.50
Discover Card/Novus card brands	<u>\$ 0.14</u> per authorization Fee <sup>1</sup>	Electronic Check Service <sup>2</sup>	_____ per transaction plus
American Express Card	<u>\$ 0.14</u> per authorization Fee <sup>1</sup>		_____ of check value
Diners Club/Carte Blanche	<u>3.00%</u> Discount rate	Electronic Benefits Transfer	_____ per transaction fee
	<u>\$0.00</u> per authorization Fee <sup>1</sup>		
JCB Card	<u>3.00%</u> Discount rate	FNS#	_____
	<u>\$0.00</u> per authorization Fee <sup>1</sup>	Return Fee	<u>\$0.00</u> per item

\* Visa/MasterCard interchange is charged on monthly gross sales. Visa/MasterCard association fees and BA Merchant Services, LLC (BA Merchant Services) and Bank of America, N.A.(Bank) processing fees are charged on monthly gross sales.

\* Diners Club/Carte Blanche and JCB Card discount rates are charged on monthly gross sales.

Visa/MasterCard discount rates:

~These fees are in addition to any charges, assessments and other fees from Visa and MasterCard. Possible Visa/MasterCard fee adjustments are explained in the Merchant Services Agreement.

~Also apply to Visa Check card, MasterMoney, and Electron Card.

~Are subject to periodic increases of fees by BA Merchant Services / Bank.

<sup>1</sup> The per item authorization fee applies to attempted and approved authorizations, for all card types.

<sup>2</sup> See Certegy or CrossCheck Check Warranty Agreement (with rates and fees) will be sent to merchant separately.

**Service Fees**

Set-Up Fee (non-refundable)	<u>\$0.00</u>	per new account/location
Monthly minimum discount	<u>\$0.00</u>	per month per location
Chargeback Fee	<u>\$10.00</u>	per item
Support Package	<u>\$0.00</u>	per month per location (Paper Statement)
Additional Card Types	_____	per installation after additional set-up
BAMS Access Fee	_____	monthly per UserID _____ Quantity
Wireless Activation Fee	_____	
Other	_____	_____
Other	_____	_____
Other	_____	_____

Fee Schedule BA Merchant Services  
2221 3221

Merchant's Initials BAG

**BA Merchant Services**

**Other Card Service Provider Fees**

**American Express Card:\*\***

Discount rate \_\_\_\_\_ EDC \_\_\_\_\_  
or \_\_\_\_\_

Monthly \$5.95 flat fee with estimated annual charge volume of up to \$4,999.00.

Mandatory regardless of charge volume for Internet merchants with physical delivery, Mail Order/Telephone Order, and Home-based businesses.

Estimated annual American Express card charge volume \_\_\_\_\_

Estimated average ticket \_\_\_\_\_

American Express Franchise Cap# \_\_\_\_\_

Monthly Gross Pay (+.03% if above \$100K) Does not apply to monthly flat fee

Monthly Net Pay (sales minus credits, less discount and fees)

3 Day Pay Frequency

If service is already established, current American Express Account Number \_\_\_\_\_

**Discover Card/Novus Card Brands:\*\***

Discount rate and per item \_\_\_\_\_

Discover Franchise code \_\_\_\_\_

A one-time \$25.00 Discover membership fee \_\_\_\_\_

If service is already established, current Discover Account # \_\_\_\_\_

**\*\*American Express and Discover Card/Novus Card brands discount rates and fees are established and billed separately by those issuers, who are responsible for settlement, chargebacks, and customer service.**

MasterCard allows issuers to collect a handling fee for specific authorization chargebacks: 07-Warning Bulletin File, 08-Requested/Required Authorization not Obtained or Declined and 47-Fraudulent transaction/Exceeds Floor Limit/Not Authorized. This fee is in addition to any other fees assessed by BA Merchant Services or the Associations and will be processed separately from the applicable chargeback. Issuers may collect this fee on each submission of the chargeback for certain merchant Industry types excluded from the handling fees which must be processed with the appropriate codes to avoid assessment of the handling fees.

**Product Fees**

	<u>Model</u>	<u>Quantity</u>	<u>Purchase</u> (Excluding Tax)
Terminal	_____	_____	_____ per device
Printer	_____	_____	_____ per device
PIN Pad	_____	_____	_____ per device
Check Reader/Imager	_____	_____	_____ per device
Imprinter	_____	_____	_____ per imprinter
Software	_____	_____	_____ per software
Other	_____	_____	_____
Other	_____	_____	_____
Specialty Supported Activation Fee***	_____	_____	_____ per terminal
Wireless Fee	_____	_____	_____ monthly per device
PIN Pad Encryption Fee	_____	_____	_____ per PIN Pad
Other	_____	_____	_____
Other	_____	_____	_____
Other	_____	_____	_____

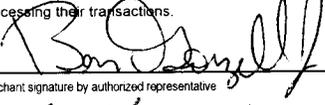
\*\*\*This Fee is assessed monthly for certain terminal applications which require specialized support and licensing. Please contact BA Merchant Services Acct. Rep for additional details.

Rental and/or Leased Fees are subject to separate agreements with TASQ Technology, Inc.

**Pricing Acknowledgement**

I have reviewed the above fee structure of my BA Merchant Services account. I understand that the above stated pricing for Visa/MasterCard is based on a minimum threshold of an average transaction size of \$30 and an annualized Visa/MasterCard sales volume of \$7,517,047. The rates and fees quoted by BA Merchant Services/Bank for acceptance of the American Express Card and Discover Card/NOVUS Card brands are subject to the terms and conditions of each respective Card issuer.

I further understand that the BA Merchant Services/Bank will review those assumptions after a period of actual processing and that my rate could be increased if either the average ticket or volume run rates are lower than the minimum thresholds. In addition, the BA Merchant Services/Bank may pass on charges imposed by credit card associations, such as Visa and MasterCard, resulting from my failure to comply with credit card regulations. The BA Merchant Services/Bank may collect these charges in the same way as other amounts owed by me under the Merchant Services Agreement ("Agreement"). I acknowledge that the Agreement provides for increases in fees. I understand that my application is subject to approval by the BA Merchant Services/Bank and by American Express and Discover Card/NOVUS Card issuers for processing their transactions.


Ben Gorzell Jr
m/05/07  
 Merchant signature by authorized representative Print Name Date


Steve Shumate  
 BA Merchant Services Representative Signature Print Name Date

Fee Schedule BA Merchant Services  
2221 3221

**AMENDMENT  
TO  
MERCHANT BANKING SERVICES CONTRACT**

This Amendment made this 1<sup>ST</sup> day of JULY, 2009, by and between Bank of America, N.A. ("Contractor") and the City of San Antonio, Texas ("City"), modifies, supercedes and replaces any conflicting terms contained in the Merchant Banking Services Contract which was dated on or about May 23, 2007 (the "Contract") including the Application, and any related Amendments, Addenda or Exhibits thereto by and between Contractor and City. All other provisions or terms of the Contract, Addenda, or Exhibits shall remain in full force and effect.

1. **Merchant Banking Services Contract, Section 2.1**, the last sentence, the words "one (1) location" shall be deleted and replaced with the words "five (5) locations." The following shall be added to the end of this section: "In regard to any other location(s) which require the ability to process credit card payments through Ticketmaster, which are subsequently agreed to in writing by the Parties, such written agreement(s) shall constitute a supplement and not an amendment to this Contract, and therefore shall not require City Council approval."

**IN WITNESS WHEREOF**, the parties hereto have set their hand and seal on the date set forth herein below.  
**THIS AMENDMENT IS NOT BINDING OR EFFECTIVE UNTIL FULL EXECUTION BY THE PARTIES.**

CITY OF SAN ANTONIO, TEXAS  
("CITY")

By: *Ben Gorrell* Date: 7/1/09

Name: Ben Gorrell Jr.  
(Please print or type)

Title: Director of Finance

BANK OF AMERICA, N.A.  
("CONTRACTOR")

By: *[Signature]* Date: 7/6/09

Name: Timothy L. Munto  
~~Senior Vice President~~

Title: Bank of America, NA

