

AN ORDINANCE 2008-10-02-0873

AUTHORIZING AN AGREEMENT WITH GENERATIONS COMMUNITY FEDERAL CREDIT UNION TO PROVIDE THE CITY WITH AUTOMATED TELLER MACHINE SERVICES FOR A 5 YEAR TERM, WITH AN OPTION TO RENEW FOR AN ADDITIONAL 5 YEAR PERIOD, FOR AN ESTIMATED REVENUE TO THE CITY OF \$456,570.00 FOR THE INITIAL TERM.

* * * * *

WHEREAS, the City of San Antonio ("City") issued a Request for Proposals ("RFP") for a provider of automated teller machines ("ATMs") at various sites to serve pedestrian foot traffic, conventioners, citizens, and employees at 20 sites operated by the City; and

WHEREAS, two proposals were received; and

WHEREAS, Generations Community Federal Credit Union was the highest ranked proposal and is recommended for award of this contract; and

WHEREAS, the ATM services will provide banking transactions, including, but not limited to, cash withdrawal and deposit services, account/balance inquiries, fund transfers, credit card advances and other transactions as permitted by the governing network regulations; and

WHEREAS, the contract is for a 5 year period, beginning on October 1, 2008, and contains an option to renew for an additional 5 year period without requiring additional City Council approval; **NOW THEREFORE:**

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

SECTION 1. The City Manager, her designee, or the Director of the Purchasing & Contract Services Department or her designee, are hereby authorized to execute the License Agreement for ATM Services which is attached hereto and incorporated herein for all purposes as Exhibit I. The City Manager, her designee, and the Director of Purchasing & Contract Services are hereby authorized to exercise the renewal provisions contained therein without further action by the City Council. Any services provided prior to the effective date of this ordinance are hereby ratified.

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

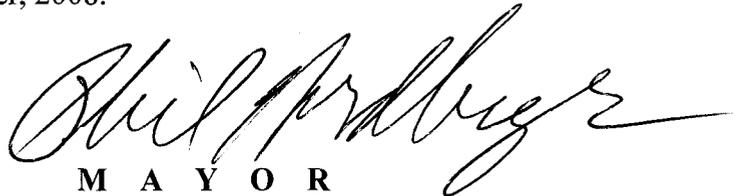
Amount	Internal Order	IO Text	General Ledger	GL Text	Fund No	Fund Text
\$336,420.00	232000000001	PRINTSHOP	4401131	Lease - ATM	76001000	BUILDING MAINTENACE
\$24,030.00	219000000000	DOWNTOWN OPERATIONS ADMINISTRA	4401131	Lease - ATM	11001000	GENERAL FUND

\$24,030.00	233000000023	MULTI- TERMINAL - ATM CEFCU	4401131	Lease - ATM	51001000	AIRPT OPERATIONS
\$72,090.00	2420000000269	CONVENTION FACILITIES	4401131	Lease - ATM	29006000	HOTEL MOTEL TAX FUN
Total						
456,570.00						

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance shall take effect on October 12, 2008.

PASSED AND APPROVED this 2nd day of October, 2008.


M A Y O R
PHIL HARDBERGER

ATTEST:


City Clerk

APPROVED AS TO FORM:


for City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 8

Name:	5, 6, 8, 11, 13, 14, 15, 16, 18, 20, 23, 24, 25, 27, 28, 30B
Date:	10/02/2008
Time:	10:40:42 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an agreement with Generations Community Federal Credit Union to provide the City with Automated Teller Machine services for a 5 year term, with an option to renew for an additional 5 year period, for an estimated revenue to the City of \$456,570.00 for the initial term. [Sharon De La Garza, Assistant City Manager; Janie Cantu, Director, Purchasing & General Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				x
Lourdes Galvan	District 5	x					
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7	x					
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

ATM Services Concession RFP

Score Summary	Maximum Points	Generations Community Federal Credit Union	First National Bank of Edinburg, Texas
A - Respondent's Experience, Background, and Qualifications	25	21.80	12.20
B - Proposed Plan	25	21.60	10.80
Sub-Total	50	43.40	23.00
C - Financial Offer	30	20.00	30.00
Sub-Total	30	20.00	30.00
Criteria A-C Sub-Total	80	63.40	53.00
D - Local Business Enterprise	10	10.00	6.00
D - Historically Underutilized Enterprise	5	0.05	0.00
D - Compliance w/SBEDA Policy	5	1.00	0.00
Sub-Total	20	11.05	6.00
TOTAL SCORE	100	74.45	59.00
RANK BASED ON TOTAL SCORE		1	2

Exhibit I

AUTOMATED TELLER MACHINE LICENSE AGREEMENT

by and between the

CITY OF SAN ANTONIO, TEXAS

and

GENERATIONS FEDERAL CREDIT UNION

AUTHORIZED BY ORDINANCE NO. 2008-09-__ - ____

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I. PARTIES & AUTHORIZING ORDINANCE

- 1.1 This License Agreement ("Agreement") is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City"), pursuant to Ordinance No. 2008-__-__-__ passed and approved on the _____ day of _____, 2008 and Generations Community Federal Credit Union ("Licensee"), an NCUA Chartered Federal Credit Union, by and through its _____, both of which may be referred to herein collectively as the "Parties".

II. TERM

- 2.1 Original Term. Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2008 and terminate on September 30, 2013.
- 2.2 Renewals. City may renew this Agreement on the same terms and conditions for one renewal term. The renewal term shall be for a period of 5 years, beginning on October 1, 2013 and terminating on September 30, 2018. The renewal shall be in writing and signed by Director, who shall have the authority to execute the renewal without further action required by the City Council.

III. GRANT OF LICENSE – LOCATIONS

- 3.1 Grant of License. For and in consideration of the fees, covenants and promises herein contained to be kept, performed and observed by Licensee, City does hereby grant to Licensee and Licensee does hereby accept from City a license for the exclusive right to install and operate one Automated Teller Machine ("ATM") at each of the following described City owned or leased properties ("Location(s)"), being the same as the Licensed Premises, all of which are located in San Antonio, Bexar County, Texas:
- 3.1.1 San Antonio International Airport – 9800 Airport Blvd. (drive-up kiosk)
 - 3.1.2 Henry B. Gonzalez Convention Center "Convention Center" - 200 East Market (wall inset unit facing Market)
 - 3.1.3 Convention Center – 200 East Market (Lila Cockrell Theater, standing kiosk)
 - 3.1.4 Convention Center – 200 East Market (Parkview facing south, standing kiosk)
 - 3.1.5 Market Square - 514 West Commerce (wall inset unit)
 - 3.1.6 Frank D. Wing Municipal Court - 401 South Frio (wall inset unit facing Frio)
 - 3.1.7 Frank D. Wing Municipal Court – Detention Center, 401 South Frio (standing kiosk)
 - 3.1.8 East Police Station - 3635 East Houston (standing kiosk)
 - 3.1.9 Plaza de Armas Building - 115 Plaza de Armas (standing kiosk)
 - 3.1.10 North Police Station - 13030 Jones-Maltsberger (standing kiosk)
 - 3.1.11 Northwest Police - 5020 Prue Road (standing kiosk)

- 3.1.12 Development Business Services Center - 1901 South Alamo (standing kiosk)
- 3.1.13 Police Academy - 12200 South East Loop 410 (standing kiosk)
- 3.1.14 Police Headquarters - 214 West Nueva (standing kiosk)
- 3.1.15 South Police Station - 711 West Mayfield (standing kiosk)
- 3.1.16 West Police Station - 7000 Culebra (standing kiosk)
- 3.1.17 Riverview Towers - 111 Soledad, Suite 400 (standing kiosk)
- ~~3.1.18 Municipal Auditorium - 100 Auditorium Circle (standing kiosk)~~
- 3.1.19 Centro Info Center - 410 East Commerce (standing kiosk)
- 3.1.20 Farmer's Market Plaza - 612 W. Commerce (standing kiosk).

City shall have the sole right to specify the exact Locations at the addresses provided above for the Licenses granted herein. Some Locations are inside buildings. Service to an ATM that is inside a building must be coordinated with City in advance.

- 3.2 Changes to Location(s). At its sole discretion, City may add or delete ATMs and/or Locations at any time during the term of this Agreement. However, should any ATM fail to perform at least 125 Foreign Transactions per month over 6 consecutive months, the Parties agree that Licensee may remove the ATM with 20 calendar days' written notice to City. Additions or deletions of ATMs or Location(s) shall be in writing and signed by the City Manager, her designee, or the Director of the Purchasing & General Services Department ("Director"), without requiring further action by the San Antonio City Council ("City Council").
- 3.3 City's Superior Interest. Licensee acknowledges that the license granted under this Agreement is limited in nature, being a personal license only, and that City does not purport to convey any real property interest in any of the property over, under or upon any of the Location(s) on which Licensee's ATMs and improvements are located.
- 3.4 Right of Entry. Upon evidence of Licensee's having obtained the insurance required herein, and the beginning of the term hereof, City grants to Licensee a right of ingress and egress to each Location for the sole purpose of installing the ATMs and constructing the improvements referenced herein, and operating and maintaining said ATMs, all during normal working hours. Access to some locations may be restricted and may require coordination with City.

IV. MINIMUM SERVICES AND OPERATIONAL REQUIREMENTS FOR ATMS

- 4.1 Transactions Processed by ATMs. As minimum services, Licensee's ATMs shall process the following transactions in English and Spanish:
 - credit card account advances / cash withdrawal
 - cash withdrawal from checking account
 - cash withdrawal from savings account
 - transfer from checking account to savings account
 - transfer from savings account to checking account

- balance inquiry from checking account
- balance inquiry from savings account
- deposit services as specified in Section 4.1.1 below
- other transactions permitted by governing network regulations

4.1.1 Deposit Services shall be required only at the following locations:

- Police Headquarters - 214 West Nueva (standing kiosk)
- South Police Station - 711 West Mayfield (standing kiosk)
- West Police Station - 7000 Culebra (standing kiosk)
- Riverview Towers – 111 Soledad, Suite 400 (standing kiosk)

4.1.2 Should City add new Locations or additional ATMs, City may require and Licensee shall provide, deposit services at the new Locations and/or new ATMs.

4.1.3 Minimum Monthly Deposits Required to Retain Deposit Services. Parties agree that if deposits at any ATM fall below an average of 2000 deposit transactions per month over a six month period, Licensee may discontinue deposit services at that ATM, upon 30 days' written notice to City.

4.2 Transaction Fees (a.k.a. Surcharge Fees).

4.2.1 ATM transaction fees or surcharge fees assessed on units provided under this Agreement may not exceed charges assessed at Licensee's ATM units that are currently located within the corporate limits of the City of San Antonio.

4.2.2 Licensee shall provide surcharge-free transactions to all of its members and shall charge no less than a \$2.00 fee for billable non-member transactions ("Foreign Transaction Fee") (e.g., cash withdrawals, account balance transfers, fund transfers, and credit card advances).

4.3 ATM Repairs and Malfunctions.

4.3.1 Licensee shall provide maintenance and repair of ATMs by qualified technicians. Maintenance and repair, or replenishment of funds, shall occur between 8:00 a.m. and 8:00 p.m., 7 days per week ("Response Hours"). Licensee's contact number for repairs, malfunctions and replenishment ("Service Number") shall be: 210-230-9376, which shall be posted on each ATM, and monitored by Licensee 24 hours a day, 7 days a week. Licensee shall respond to calls for service on-site within 2 hours, during Response Hours. If Licensee does not have someone on-site within 2 hours of City's notification, then in addition to any other remedies City may have, City may post an "Out of Order" sign on the ATM requiring service. Licensee shall provide written notice to City, and update the number on each ATM, if the Service Number changes. Said notice shall be provided as promptly as possible, but no later than 2 business days from the date of such change.

4.3.2 Licensee shall operate and maintain the availability of the ATM system in a manner that will ensure 95% uptime or a minimum of 22.8 hours for each 24 hour period, 7 days per week. Three occurrences of a failure to meet these uptime requirements within a period of 365 days shall constitute a separate event of default, in addition to those set forth elsewhere herein.

4.4 Licensee's Liaison. Licensee shall assign a fully qualified and experienced representative to manage Licensee's ATMs at all Locations and who will serve as liaison between Licensee and City with full authority to make decisions for Licensee as may be required under the terms of this Agreement. On or before the effective date of this Agreement, Licensee shall have provided to City the following: (1) name, business address and telephone number of Licensee's ATM manager at each Location; and (2) the name, business address and telephone number of an alternate person who is authorized to take such action in the absence of Licensee's manager. Licensee shall update this information through the term of the Agreement.

4.5 ATM Functionality.

4.5.1 Networks. Each ATM shall be capable of executing transactions utilizing various credit, debit, and ATM cards. The ATMs shall access the following networks: Cirrus, PULSE, and PLUS, as well as Visa, MasterCard, Discover and American Express debit card networks.

4.5.2 ADA Compliance. Licensee, at its sole cost and expense, shall be responsible for compliance with the requirements of the Americans with Disabilities Act (ADA) as to ATM equipment and accessibility thereto.

4.5.3 The ATMs shall be aesthetically appealing, functional and resistant to rough usage, as well as vandalism. Each machine and proposed enclosures shall be subject to the approval of the Director prior to installation.

4.5.4 ATMs must have system management capabilities for predicting, assisting and reporting maintenance, and alert when cash replenishments are needed. Licensee must be aware of special events, such as Fiesta and the NBA Final Four, and check ATMs during high traffic hours and events to ensure adequate stocking.

4.5.5 Each ATM unit shall bear in a plainly visible location the Financial Intuition's name, ATM machine number, the location it is in, and have a twenty-four (24) hour, seven (7) days per week toll free telephone number to call for inquiries, maintenance issues, customer service issues and complaints.

4.5.6 All ATM units must display a map illustrating the location of each ATM placed throughout San Antonio. The map shall serve as a convenient tool for customers in the event that the ATM is malfunctioning or receiving service. The map shall be affixed to the ATM, not the screen panel.

4.5.7 The ATMs shall display all written directions necessary to instruct customers in the operation of the ATM, provide a list of ATM transactions fees, transaction surcharges, or any other fees charged, and to whom the transactions fees and/or surcharges apply.

4.5.8 The ATMs shall conduct all transactions in United States Currency and use ~~twenty-dollar bills as a primary denomination for withdrawals.~~

4.5.9 Each ATM unit must be equipped with an anti-theft/vandalism alarm system that is capable of notifying Licensee should an ATM be burgled.

4.6 Reports. With each monthly remittance of the License Fee, Licensee shall provide monthly transaction reports, which shall include statistical terminal data, delineating services used for each ATM during the previous month. Reports shall be in a form and content approved by City. The monthly report shall include, at a minimum, a summary of ATM activity that shows the Foreign, Member (including deposit transactions), Total and Alternate Transactions processed per ATM, the fees charged for transactions, and the fees paid to City per ATM. The reports are due by the 20th day of each month and shall be sent to the following contact persons at the addresses below, unless otherwise notified in writing by City.

Maggie McCoy
Purchasing & General Services
P.O. Box 839966
San Antonio, Texas 78283-3966

Liz Rodriguez
Convention, Sports Entertainment
Facilities
P.O. Box 1809
San Antonio, Texas 78296

4.7 Advertising and Signage.

4.7.1 Trademark. Licensee may use its trademark, logo or service mark as permitted by applicable laws or regulations on each ATM operated by Licensee.

4.7.2 Directional Signage at Convention Center. Licensee may place directional signage for the ATM located in the Parkview Area of the Convention Center, subject to the prior written approval of the Director of City's Convention, Sports & Entertainment Facilities Department as to location, content, size, style and installation plans. Said consent shall not be unreasonably withheld.

4.7.3 Revenue Generating Advertising. Any other advertising, co-branding or signage, whether on-screen or hardcopy displayed on or about an ATM, shall require the advance written approval of Director. Licensee shall pay 50% of the gross proceeds of any revenue generated for Licensee by such advertising to City as part of the Alternate Transaction Volume defined herein.

4.7.4 Toll Free Number for Customer Complaints. Licensee shall post signage at each ATM Location with a toll-free number that is available 24 hours a day, 7 days per week for users to report complaints.

4.8 Development Plan.

~~4.8.1 Age of Equipment at Beginning of Term. Licensee shall provide and install new equipment or equipment that was manufactured within the last 3 years. Refurbished equipment that is older than 3 years shall not be considered nor accepted. Parties recognize and acknowledge that Licensee has ATMs in place at many of the above described Locations pursuant to its prior contract with the City and that those ATMs are still at their respective Locations. Licensee shall replace these older ATMs with new ATMs and install ATMs at the new Locations, including the making of any necessary improvements, all in accordance with the timeline provided below. All new ATMs shall have color screens.~~

4.8.2 New Locations. The following 4 Locations are new Locations and do not presently have ATMs: Riverview Towers – 111 Soledad, Suite 400 (standing kiosk); Municipal Auditorium - 100 Auditorium Circle (standing kiosk); Centro Info Center – 410 East Commerce (standing kiosk); and Farmer's Market Plaza - 612 W. Commerce (standing kiosk). Licensee shall install ATMs at these new Locations and have them operational within 90 to 110 days from the effective date of this Agreement.

4.8.3 Replacement of Older ATMs.

4.8.3.1 The remaining ATMs shall be replaced based on public visibility and the highest monthly volume for non-member transactions. Licensee shall propose the order of replacement in writing to City for City approval. City shall have the ultimate discretion in choosing the order of replacement.

4.8.3.2 Parties agree that the first 5 ATMs to be replaced shall be: Market Square – 514 West Commerce (wall inset unit); Convention Center – 200 East Market (Lila Cockrell Theater, standing kiosk); Frank D. Wing Municipal Court - 401 South Frio (wall inset unit facing Frio); Police Headquarters - 214 West Nueva (standing kiosk); and Plaza de Armas Building - 115 Plaza de Armas (standing kiosk). Licensee shall install replacement ATMs at these Locations and have them operational within 180 days from the effective date of this Agreement.

4.8.3.3 Once the first 9 ATMs have been installed and/or replaced as described above, Licensee shall replace the remaining ATMs at the rate of 1 ATM every 30-45 days, until all ATMs have been replaced.

4.8.4 Liquidated Damages. City requires the licensed locations to be substantially improved and open for business in accordance with the Development Plan. If an

ATM is not open for business in a commercially reasonable timetable, then the City may assess liquidated damages at the rate of \$30.00 per day per non-operational ATM, until the ATM opens to the public for business. The Parties agree that the actual damages that might be sustained by City by reason of Licensee's failure to meet its Development Plan are uncertain and would be difficult of ascertainment, and that the sum of \$30.00 per day per non-operational ATM would be a reasonable compensation for such breach. Licensee hereby promises to pay, and City hereby agrees to accept, such sum as liquidated damages, and not as a penalty, in the event of such breach.

V. USE OF LOCATIONS

5.1 Use. Licensee shall install and operate the ATMs described in Article III above. The license granted herein is exclusively for the installation and operation of ATMs, and shall include the right, subject to the prior written consent of Director and at the sole cost and expense of Licensee, to extend within the adjoining City-owned properties, electric lines and appropriate telecommunications equipment, cameras and alarm systems, all in compliance with industry standards necessary for the operation of such ATM. Licensee shall, at its sole cost and expense, pay the cost of installing separate telephone lines, and communications-related data in all instances. If any Locations are added to this Agreement which require a free-standing operation, then Licensee, at its sole expense, shall install a separate electric meter, and necessary infrastructure, to serve such Locations.

5.2 Utilities.

5.2.1 Licensee shall bear all expenses associated with the extension of electric, data or other utility service(s) from existing termination points or installations to the locations of ATMs. Licensee shall coordinate with the designated City representative at each location prior to the commencement of work. The City shall pay customary charges for electricity used in the operation of ATMs installed under the ATM Services Concession Agreement. Licensee shall pay for all other utility service(s), including data services, necessary to the operation of the ATM machines. Additionally, Licensee shall arrange to be directly invoiced for costs associated with use of utility services, with the exception of electric service, and shall make timely payment thereafter. Plans for the installation or extension of wire, cables, equipment and the like associated with utility, electric and data service are subject to approval by the designated City representative(s) prior to the commencement of work thereon.

5.2.2 Dedicated Outlet for Convention Center. Licensee desires a separate circuit or dedicated outlet for the ATM located in the lobby of the Convention Center. Licensee may install a separate, dedicated circuit at this location at its sole cost and expense, provided Licensee obtains the prior written approval of the Director of City's Convention, Sports & Entertainment Facilities Department of the plans for the installation or extension of conduit, wire, cables, equipment and the like

associated with the installation of the circuit. Licensee may provide an outlet lockbox for the outlet. Licensee shall coordinate this work with Robert Carr, the Convention, Sports & Entertainment Facilities Building Maintenance Manager.

- 5.3 Licensee, at its sole cost and expense, shall be responsible for all construction, installation, maintenance, operation and future repair and replacement of improvements, including, but not limited to, the ATMs, and related equipment, all electrical, mechanical and telephone connections thereto, and the encasement for such equipment (hereafter collectively "improvements") to be made to or on the Locations and adjacent City-owned properties necessary for such work. Further, Licensee, at its sole cost and expense, shall:
- 5.3.1 secure all necessary permits;
 - 5.3.2 comply with all federal and state laws, City ordinances, building codes, rules and regulations, and
 - 5.3.3 secure the approval of all City departments, boards and commissions, including, but not limited to, the Historic Design & Review Commission ("HDRC"), prior to the start of any construction, or installation throughout the Original Term and any Renewal Term. More particularly, and without limiting the foregoing, approval of the HDRC is required prior to the installation of the ATM at Municipal Auditorium, 100 Auditorium Circle.
- 5.4 Licensee shall be responsible for all construction and installation of future improvements and any other costs related to this Agreement. City shall have no financial obligations whatsoever regarding this Agreement.
- 5.5 Cuts. Any cuts in paved areas, walls or other improvements made by Licensee during the installation or any ATM or during its removal, shall be made in a good and workmanlike manner so as to match as nearly as practicable the surrounding area and any damage to any City-owned properties, including the Locations, shall be repaired or restored immediately at Licensee's sole cost and expense upon notice from City of such damage.
- 5.6 City's Disclaimer. City shall not be liable for any damages caused to any Locations by reason of (1) any construction performed previously by Licensee's predecessors or in the future by Licensee, or (2) maintenance of any ATM at any Location, or (3) any operation or activities in, on or about the Locations save and except as explicitly stated herein.
- 5.7 Detour/Barricades. If a detour route or a barricade is required to protect the interest of City or the public, or for Licensee's construction, installation, improvements, alterations, additions, repairs, maintenance, remodeling, rehabilitation, retrofitting, renovations, restorations, adjustments, relocation reconstruction or similar work of a construction-oriented nature (hereafter "improvements constructed") in, on or about the Locations, then Licensee shall, in accordance with plans developed, furnished and approved by City, construct the detour, make arrangements for such barricades, and provide for street traffic and pedestrian movements, all at Licensee's sole cost and expense.

- 5.8 No Liens. Licensee covenants that Licensee, Licensee's contractors, and subcontractors shall not bind, or attempt to bind, City for payment of any money in connection with any improvements constructed, or equipment installed, as defined above, in, on or about the Locations, whether authorized or unauthorized hereunder. Licensee hereby agrees to promptly pay any and all persons supplying labor, services and materials in the performance of any and all current or future improvements constructed. In connection therewith, Licensee shall not suffer or permit any mechanic's lien or other liens to be filed against City's fee interest in the Locations nor against Licensee's license rights, nor any buildings or improvements constructed or equipment installed on the Locations by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Licensee. If any such mechanic's liens or materialmen's liens shall be recorded against the Locations, or any improvements thereon, Licensee shall cause same to be removed.
- 5.9 Construction Signs. In the event construction signs become necessary, Licensee shall obtain approval of such signs by all applicable City departments, boards and commissions, including, but not limited to, the Historic Design & Review Commission. Licensee shall install all signs, including location, direction and warning signs, as required by applicable City ordinances, State and Federal laws.
- 5.10 Safety/Security Lighting. City hereby delegates to Licensee and Licensee hereby accepts all responsibility, liability, and costs related to security and lighting as provided for in Texas Finance Code, Chapter 59, Subchapter D, §59.301 through §59.310 ("Safety Statute for ATMs"), as it may be hereafter amended, with regard to any responsibility, liability, or cost City might have as an owner or operator under such law as to safety and lighting. Licensee shall comply with all safety and security measures described in said Safety Statute for ATMs, including, but not limited to, compliance with the lighting and notice requirements described therein. Licensee shall similarly comply with all State and Federal laws with regard to safety and security at Locations. Licensee shall be solely responsible for the security of its ATMs, including currency contained therein, and all associated supplies.
- 5.11 Operation, Maintenance and Repairs.
- 5.11.1 Responsibility. Except as otherwise provided herein, Licensee shall, assume the entire responsibility, cost and expense, for all operation, repair and maintenance of all improvements constructed by Licensee, including free-standing enclosures, at the Location(s), which operation, repair or maintenance directly relates to the placement of said ATMs in, on or at the Location(s), whether such operation, repair or maintenance be ordinary or extraordinary, structural or otherwise. Additionally, without limiting the foregoing, Licensee shall, at its sole cost and expense:
- 5.11.1.1 maintain at all times Licensee's fixtures, improvements, ATM, and related equipment, and all other personal properties of Licensee located on the Locations in a good state of repair and preservation, excepting

ordinary wear and tear and obsolescence in spite of repair, as determined by City;

- 5.11.1.2 replace or substitute any fixtures and ATMs, and related equipment of Licensee which have become inadequate, obsolete, worn out, unsuitable or undesirable with replacement or substitute fixtures and equipment all of which fixtures and equipment must be free of all liens and encumbrances;
- 5.11.1.3 keep at all times, in a clean and orderly condition and appearance and free of debris, each respective ATM, Licensee's fixtures, improvements, equipment and all other personal property of Licensee which are located on any part of the Locations;
- 5.11.1.4 provide and maintain all obstruction lights, security lights, and similar devices, fire protection and safety equipment and all other equipment of every kind and nature required by laws, rules, orders, ordinances, resolutions or regulations of any competent authority, including City and Director;
- 5.11.1.5 observe all insurance and other requirements and regulations on each respective Location concerning the use and condition thereof for the purpose of reducing fire hazards and insurance rates;
- 5.11.1.6 repair any damage caused by Licensee to paving or other surfaces of each respective ATM at each Location in connection with the scope of this Agreement, including replacing broken or cracked plate glass and painting and repainting Licensee's improvements upon each such Location;
- 5.11.1.7 be responsible for the operation, maintenance and repair of all utility service lines either installed by Licensee for use and operation of Licensee's equipment, or to which Licensee's equipment may be connected, but installed by City, upon each respective ATM at each Location, including, but not limited to, electric and telephone conduits and lines;
- 5.11.1.8 provide and use suitable covered metal receptacles for all garbage, trash, and other refuse consistent with adjacent City-owned properties receptacles; assure that boxes, cartons, barrels, or similar items are not piled in an unsightly, unsafe manner, on or about each ATM at each Location, or create an obstacle to vehicles in those Locations with drive-through service; provide a complete and proper arrangement satisfactory to Director for the adequate sanitary handling and disposal of all trash, garbage, and refuse caused as a result of the operation of its business.

- So long as Licensee provides City with bags for the trash receptacles, City will empty all indoor trash receptacles. Licensee shall remain responsible for emptying outdoor trash receptacles. Licensee shall be responsible for clean up of all of Licensee's construction related debris at all Locations.

5.11.2 Adequacy. The adequacy of the performance of the above set forth maintenance and repair by Licensee shall be determined by Director, whose judgment shall be conclusive. Should Licensee refuse or neglect to undertake any operation, maintenance or repair set forth in this section, or if City is required to perform an operation, maintenance or repair necessitated by the negligent acts or omissions of Licensee, its employees, agents, assignees, or sublicensees, then City shall have the right, but not the obligation, to perform such maintenance or repair, but not operation, on behalf of, and for Licensee. The costs of such maintenance or repair, plus the cost of any associated overhead reasonably determine by City shall be reimbursed by Licensee to City no later than 10 days following receipt by Licensee of written demand from City for same.

5.12 Fire and Other Damage.

5.12.1 Damage. In the event that the improvements constructed on any Location or the ATM equipment shall be partially damaged by fire or other casualty and deemed unfit for use or occupancy, as determined solely by Director, then the same shall be repaired, rebuilt or replaced, as the context requires, by Licensee at Licensee's expense without unreasonable delay. From the date of such casualty until repair, rebuild or replacement, the payment of monthly Fees hereunder shall be abated for such specific ATM or Location only, unless Licensee, in Director's sole judgment, unreasonably delays repairs, based on the standards set forth in Section 5.12.2. However, if the damage was caused intentionally or negligently by Licensee, as determined solely by Director, such Fees will not be abated. In the event that said ATM or Location shall be so slightly injured in any such casualty as not to be rendered unfit for occupancy or operation, as solely determined by Director, then the Fees as to such specific ATM or Location hereunder shall not cease or be abated during the subsequent repair period. Furthermore, if such ATM or Location is damaged by fire or other casualty to such an extent as to render it not feasible, as determined solely by Director, to repair or rebuild the improvements constructed on the specific Location, then at the option of City, and upon 30 days' written notice to Licensee, this Agreement shall cease as to said specific ATM or Location.

5.12.2 For those situations described in Section 5.12.1 above, requiring Licensee to repair, rebuild or replace, Licensee shall proceed with reasonable diligence and, at its sole cost and expense, rebuild, repair and/or replace and restore its improvements, signs, fixtures, furnishings, equipment, ATM(s) and other items provided or installed by Licensee in or about the specific ATM or Location in a

manner and to a condition at least equal to that which existed prior to the damage or destruction. If the Location is not restored within 30 days or the ATM replaced with newly manufactured equipment within 90 days after the date of damage, unless such time is extended by City in writing, at the sole discretion of Director, Licensee shall pay to City an Anticipated Lost Revenue Fee. The Anticipated Lost Revenue Fee shall be in an amount equal to the average of the License Fees paid to City for the 3 prior months for that specific Location. ~~The Anticipated Lost Revenue Fee shall be paid to City starting on the 31st day, or 91st day, as applicable, unless extended by Director in writing in Director's sole discretion.~~ Alternatively, if such repair schedule is not met, City has the right to terminate this Agreement as to the specific Location where the damage occurred with 10 days' prior written notice to Licensee, notwithstanding other termination rights herein. Further, Licensee agrees to pay the Anticipated Lost Revenue Fee to City for said 10 days as calculated based on a pro-rata portion.

5.12.3 Responsibility for Damage to City-owned or Leased Properties. If any other City-owned or leased real or personal property is damaged as a result of fire or other casualty and as a consequence of, or directly related to, Licensee's ATM operations and installations on any of the Locations, then Licensee agrees to immediately repair and replace, at its sole cost and expense, such damaged properties, completing such repair or replacement within 90 days after the date of damage, unless an extension is granted by Director. Alternatively, at City's option, Licensee shall reimburse City for City's costs of repair or replacement.

5.13 Fixed Improvements – Public Works.

5.13.1 Performance and Payment Bonds. For all Fixed Improvements described in Licensee's Development Plan, and for all work of License performed hereunder under a contract that constitutes a "Public Work Contract" as defined in Chapter 2253, Texas Government Code, as hereafter amended, Licensee shall provide performance and payment bonds made payable to the City of San Antonio, executed by a corporate surety acceptable to City who is licensed pursuant to the Texas Insurance Code. The performance bond shall further provide that the surety shall indemnify the obligee for all damages or losses resulting from the principal's default and guarantee the principal's performance of all terms and obligations under this Agreement. The payment bond shall be provided as security for all persons supplying labor and material in the performance of the public work portion of this Agreement.

Said bonds must each have attached thereto a Power of Attorney as evidence of the authority of the person executing the bonds to bind the surety. These bonds must be furnished in compliance with the statutory requirements of the Texas Government Code, Chapter 2253, and in the case of the payment bond, with the statutory requirements of the Texas Property Code, Chapter 53. The bonds must be provided in form and substance reasonably satisfactory to the City. Each bond

shall name the City as an additional obligee and shall be in the penal sum equal to all of Licensee's construction contracts, prior to beginning such work.

The requirement for a performance bond under this section is in addition to the requirement for a performance bond under Article XXIX below.

~~5.13.2~~ Prevailing Wage Rates. For all Fixed Improvements described in Licensee's Development Plan, and for all work of License performed hereunder under a contract that constitutes a "Public Work" as defined in Chapter 2258, Texas Government Code, as hereafter amended, Licensee shall comply with this provision regarding prevailing wage rates.

5.13.2.1 Definitions:

(1) Prevailing Wage Rate – that rate which has been determined by City to be the applicable prevailing wage rate, including the per diem rate and the rate for legal holiday and overtime pay, as set forth in Attachment B-1 (Construction Types: Heavy and Highway) and Attachment B-2 (Construction Types: Building), depending the Location, attached hereto and fully incorporated herein, for each category of worker. Parties recognize that this rate is subject to change by the U.S. Department of Labor.

(2) Worker - person employed by Licensee or a Subcontractor in the execution of this Agreement. A worker includes, but is not limited to, laborers and mechanics.

5.13.2.2 Payment of Prevailing Wage Rate

Licensee shall pay to its workers not less than the prevailing wage rate for that class of worker as described in said Attachment B-1 or Attachment B-2, as applicable, or as hereafter amended. Licensee shall contact City no earlier than 30 days prior to beginning construction or improvements to determine the Prevailing Wage Rate that is then effect and shall pay the rate in effect at the time the work is performed. Further, Licensee shall stipulate in all contracts with subcontractors engaged by Licensee in furtherance of the execution of this agreement that said subcontractors pay not less than the prevailing wage rate for its workers, and shall attach as an exhibit to said contracts a copy of Attachment B-1 and Attachment B-2, or the certificate of rates that are then in effect as provided by City.

5.13.2.3 Penalty for Non-payment

A Licensee or subcontractor who pays less than the prevailing wage rate to its workers, shall pay to City Sixty Dollars (\$60.00) for each worker

employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in this Agreement. Licensee shall stipulate in all contracts with subcontractors engaged by Licensee in furtherance of the execution of this agreement that Subcontractor is subject to this \$60.00 penalty if Subcontractor fails to pay said prevailing wage rates to its workers.

5.13.2.4 Records

Licensee and Subcontractor shall keep a record showing: (1) the name and occupation of each worker employed by the Licensee or Subcontractor; and (2) the actual per diem wages, including legal holiday and overtime wages, paid to each worker. These records shall be open at all reasonable hours to inspection by the officers and agents of City. Licensee shall stipulate in all contracts with subcontractors engaged by Licensee in furtherance of the execution of this agreement that Subcontractors must maintain and make available for inspection the records as described in this article.

5.13.3 Workers' Compensation. For all building or construction work performed hereunder, as defined in Section 406.096, Texas Labor Code, as hereafter amended, Licensee shall comply with this provision regarding workers' compensation. The term "contractor" as used below shall mean Licensee.

5.13.3.1 Definitions:

(1) Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

(2) Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the City.

(3) Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing,

hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- 5.13.3.2 The contractor shall provide coverage, based on proper reporting of ~~classification codes and payroll amounts and filing of any coverage agreements~~, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- 5.13.3.3 Contractor must provide a certificate of coverage to City prior to being awarded the contract.
- 5.13.3.4 If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with City showing that coverage has been extended.
- 5.13.3.5 The contractor shall obtain from each person providing services on a project, and provide to City:
- (1) a certificate of coverage, prior to that person beginning work on the project, so City will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- 5.13.3.6 The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- 5.13.3.7 The contractor shall notify City in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- 5.13.3.8 The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

5.13.3.9 The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the City in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

5.13.3.10 By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the City that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the

project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

5.13.3.11 The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the City to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the City.

VI. PERSONAL PROPERTY OF LICENSEE

- 6.1 ATMs Constitute Personal Property. The ATM equipment used by Licensee, and each part thereof, is, and for all purposes shall remain Licensee's personal property and shall not become or be considered real property or a part of the Locations, regardless of whether or by what means it is or may become attached or affixed to the Locations. All improvements constructed upon the Locations shall be approved in advance in writing by City, and shall become the property of City at no cost to City, upon termination of this Agreement, but only if such improvements constructed are accepted by City upon such termination. Otherwise, Licensee shall remove such improvements constructed, and shall repair any damage to the exterior of the respective City-owned or leased property caused by such removal, at Licensee's sole cost and expense. City will advise Licensee of its acceptance or rejection of the improvements at least 30 days prior to any termination date. The space in which each ATM was located shall be returned to the same condition as it was prior to its placement on the Location, normal wear and tear excepted. Licensee may place on the Locations any statement Licensee deems necessary or desirable to disclose and protect its interest in the personal property, subject only to Director's right of rejection as to design or safety.
- 6.2 Removal. Upon termination of this Agreement, Licensee shall immediately secure all of its personal property at the Locations to prevent theft, damage or destruction. Within 10 days after termination, Licensee shall remove said personal property from the Locations and return to City the space in which the ATM was located in the same condition as prior to its placement on each respective Location, at the sole cost and expense of Licensee, except for construction or improvements made upon the Locations by Licensee and accepted by City. City shall not be liable for the theft, damage or other conditions or destruction of the personal property or construction or improvements at any time during the term of this Agreement or upon termination and thereafter.
- 6.3 Abandonment. If improvements constructed, fixtures, equipment, signs, lighting or personal property remain on the Locations for a period of 10 days after the end of the Original Term or Renewal Term, then such items shall be deemed abandoned by Licensee

and may be sold by City at a public or private sale without any liability to Licensee whatsoever, for payment of damage or otherwise.

VII. FEES & PAYMENT TERMS

~~7.1 License Fee.~~ Licensee shall pay to City a License Fee of 50% of all transaction fees or surcharges charged on foreign transactions, and 50% of all gross revenue collected from Alternate Transactions, generated by each ATM at each Location for each month of the term of this Agreement and all renewals hereof.

7.1.1 Alternate Transactions are those transactions which generate revenues at each ATM at each Location, other than transaction fees or surcharges, including, but not limited to, any advertising revenues, generated through the ATM equipment, other than that advertising Licensee's business and services.

7.1.2 Foreign Transactions are those transactions which are conducted by non-members of Licensee at each ATM at each Location.

7.2 Payment in Arrears. Licensee shall pay City the License Fee, if any, due to City for the immediately preceding month, on the 20th day of each month throughout the term of this Agreement and all renewals hereof, beginning with the second month following the effective date of this Agreement.

7.3 Place of Payment. All payments shall be made payable to the City of San Antonio. Licensee shall mail all revenue checks to: City of San Antonio, Finance Department – Accounts Receivable:

P.O. Box 839975, San Antonio, Texas 78283-3875 or
111 Soledad, 4th Floor, San Antonio, Texas 78215.

7.4 ATM Remittance Form. All payments shall be sent to the City with an ATM Remittance Form, a copy of which is attached hereto and incorporated herein as Attachment C. Omission of this form may delay credit for payments received. Form revisions will be made by the Purchasing & General Services staff as ATM machines are added or removed, and as the City internal structure is altered.

7.5 Copies of Payments. Licensee shall provide a scanned copy of each check to the following City contact persons at the email addresses below, unless otherwise notified in writing by City.

Maggie McCoy at maggie.mccoy@sanantonio.gov
Liz Rodriguez, liz.rodriguez@sanantonio.gov

7.6 Responsibility for Taxes, Fees or License Charges. The fees and charges paid to City shall not include any taxes, fees or other license charges that may be levied, assessed or charged

by any governmental entity. Licensee shall pay such taxes, fees or other license charges directly to the appropriate taxing authority.

7.7 Holdover. If Licensee remains on any Location after the end of the term or any renewal thereof, without the approval of City, then Licensee shall continue to pay to City the License Fee stated herein for every full or partial month of such holdover.

7.8 No fees or expenses of Licensee shall be charged by Licensee nor be payable by City.

VIII. OWNERSHIP OF DOCUMENTS

8.1 Any and all writings, documents or information in whatsoever form and character produced by Licensee pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Licensee.

8.2 Licensee understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

IX. RECORDS RETENTION & AUDIT

9.1 Records Retention

9.1.1 Licensee shall maintain, in accordance with generally accepted accounting principles, full, complete and accurate records and accounts of fees and all sums of money paid or payable for or on account of or arising out of the business and all business transactions conducted at each ATM for each Location covered by this Agreement or for the account of Licensee, for each day of the Original Term and Renewal Term hereof. Such records and accounts and all supporting records shall be kept in a format mutually agreed upon by Licensee and City, provided to City on a monthly basis, and preserved by Licensee for 4 years ("retention period") from the date of termination of the Agreement at the local offices of Licensee, and made available to City and City's duly authorized agents and representatives for examination during Licensee's regular business hours. City reserves the right to audit Licensee's books and records at any time upon demand.

9.1.2 If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Licensee shall retain the records until the resolution of such litigation or other such questions. Licensee acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Licensee to return said documents to City prior to or at the conclusion of said retention.

- 9.2 Audit. City reserves the right to audit Licensee's books and records of receipts at any time for the purpose of certifying the Foreign Transaction Volume, Member Transaction Volume, Total Transaction Volume and Alternate Transaction Volume reported hereunder. If, as a result of such audit, it is established that Licensee has understated the revenue generated by the ATM licensed hereunder by 3% or more of the amount reported to City during the previous reporting period, then the entire expense of said audit shall be born by Licensee. Any additional Fees due as a result of any understatement shall be paid by Licensee to City with interest thereon at the rate of 10% per annum, or the highest rate allowed by Texas law, from the date such additional Fees became due.
- 9.3 Public Information. Licensee acknowledges that such records are subject to the Texas Public Information Act. Licensee shall notify City, immediately, in the event Licensee receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Licensee understands and agrees that City will process and handle all such requests.

X. TERMINATION

- 10.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 10.2 Termination Without Cause. This Agreement may be terminated by City upon 30 calendar days' written notice, which notice shall be provided in accordance with Article XI. Notice.
- 10.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article XI. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 10.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XV. Assignment and Subcontracting;
 - 10.3.2 Licensee's failure to pay any Fees or other payments as provided for in this Agreement (a "monetary default") and such failure continues for a period of 10 days after receipt by Licensee of written notice thereof;
 - 10.3.3 Licensee's neglect or failure to perform or observe any of the non-monetary terms, provisions, conditions or covenants herein contained (a "non-monetary default"), and such neglect or failure continues for a period of 30 days after receipt by Licensee of written notice of such non-monetary default;

- 10.3.4 Licensee becomes insolvent, makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy, or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its properties;
- 10.3.5 A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law is filed against Licensee and not dismissed within 30 days after the filing thereof;
- 10.3.6 Licensee discontinues operations of the ATM on any of the Locations, other than due to acts of God, mechanical difficulties or causes beyond the control of Licensee, in City's sole judgment, for a period of 3 or more consecutive days; or
- 10.3.7 Any other default specifically identified in this Agreement; however, if such other default has a different cure period stated, then that cure period shall control for that specified default.

10.4 Termination, Options, and Remedies.

- 10.4.1 Future Legislation. Notwithstanding any other rights to renegotiate or terminate herein, this Agreement may be renegotiated or terminated by Licensee upon 60 days' advance written notice to City as to any or all of the Locations pursuant to the authority of any subsequent legislation passed after the Commencement Date of this Agreement if said legislation prohibits the charging by Licensee of ATM surcharge fees or substantially reduces the Surcharge Fee that may be charged by Licensee for the use of Licensee's ATMs.
- 10.4.2 If a crime of any nature occurs at any Location while an individual is attempting to use the ATM or such crime is directly related to the use or service of the ATM, then City shall have the right to temporarily suspend or terminate this Agreement as to said Location immediately upon notice to Licensee. The period of the temporary suspension, if any, shall be at City's sole discretion.
- 10.4.3 If City terminates this Agreement in whole or in part, Licensee shall peacefully quit and surrender to City the specific Locations affected by City's termination, but Licensee shall remain liable as hereinafter provided. Alternatively, City shall have the right, at its election, to enter upon and take possession of the Locations where the default occurs, without demand or notice, and City may repossess said Locations as City's former estate, expelling Licensee and those claiming under Licensee, forcibly if necessary, without prejudice to any remedy for arrears of Fees or any preceding breach of covenant and without liability to Licensee or those claiming under Licensee for such repossession.
- 10.4.4 City's repossession of any Location shall not be construed as an election to terminate this Agreement, nor shall it cause a forfeiture of Fees or other charges remaining to be paid during the balance of the Original Term or Renewal Term, unless a written notice of such intention be given to Licensee. Notwithstanding

any relicensing by City without termination, because of any default by Licensee, City may, at any time after such relicensing, elect to terminate this Agreement for any such default.

10.4.5 Licensee agrees that City shall not be liable and Licensee's liability shall not be affected or diminished in any way whatsoever for City's failure to relicense a ~~Locations, or in the event any Location is relicensed, for failure to collect any Fees~~ under such relicensing.

10.4.6 In the event that City shall relicense any Location(s), then any fees received by City from such relicensing shall be applied: First to any costs or expenses incurred by City as a result of Licensee's default; Second, to the payment of any indebtedness due hereunder from Licensee to City; Third, to the payment of any cost of such relicensing; Fourth, to the payment of the cost of any repairs or other improvements to a Locations to bring said Locations up to good condition, as solely determined by City, and the residue, if any, shall be held by City and applied in payment of any other future Fees, charges or costs as the same may become due and payable hereunder, by virtue of Licensee's default herein. Should that portion of such fees received from such relicensing during any month, which is applied to the payment of Licensee's Fees and other indebtedness, costs of relicensing or other costs hereunder, be less than the amount due for such indebtedness or relicensing or other costs, then Licensee shall pay such deficiency to City within 10 days after City mails a notice to Licensee indicating the amount due.

10.4.7 If City shall terminate this Agreement or take possession of any Locations by reason of Licensee's default, Licensee and those holding under Licensee, shall forthwith remove their goods and effects from said Location. If Licensee or any such claimant shall fail to remove such goods and effects, then City may, without liability to Licensee or those claiming under Licensee, remove such goods and effects and may store the same for the account of, and at the expense of Licensee or of the owner thereof at any place selected by City, or, at City's election, and upon giving 15 days' written notice to Licensee of the date, time and location of sale, City may sell the same at public auction (including, but not limited to, internet auction), or private sale on such terms and conditions as to price, payment and otherwise as City in its sole discretion may deem advisable. If in City's sole judgment, the cost of removing and storing or the cost of selling any such goods and effects exceeds the value thereof or the probable sale price thereof, City shall have the right to dispose of such goods in any manner City may deem advisable, without liability to Licensee or those claiming under Licensee. Any goods or effects left on the Location(s) for a period in excess of 30 days after such termination or taking possession by City shall be deemed abandoned by Licensee or any other claimant and may be so removed and sold by City in accordance with the terms of this section.

- 10.4.8 Licensee shall be responsible for all costs of removal, storage and sale, and City shall have the right to reimburse itself from the proceeds of any sale for all such costs paid or incurred by City. If any surplus sale proceeds remain after such reimbursement, City may deduct from such surplus any other sum due to City hereunder and shall pay over to Licensee any remaining balance of such surplus sale proceeds.
- 10.4.9 If City shall enter into and repossess any Location for reason of the default of Licensee in the performance of any of the terms, covenants or conditions herein contained, Licensee hereby covenants and agrees that Licensee will not claim the right to redeem or re-enter said Location to restore the operation of this Agreement and Licensee hereby waives the right to such redemption and re-entrance under any present or future law, and does hereby further, for any party claiming through or under Licensee, expressly waive its right, if any, to make payment of any Fees or other sums or otherwise, of which Licensee shall have made default under any of the covenants of this Agreement and to claim any subrogation of the rights of Licensee under such circumstances, or any of the covenants thereof by reason of such payment.
- 10.4.10 The words "enter into and repossess" and "taking possession" as used in this Agreement are not restricted to their technical legal meaning.
- 10.4.11 All rights and remedies of City herein created or otherwise existing at law are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as deemed desirable.
- 10.4.12 If proceedings shall at any time be commenced for recovery of possession of Location(s) and compromise or settlement shall be effected, either before or after judgment, whereby Licensee shall be permitted to retain possession of Location(s), then such proceeding shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof or of this Agreement.
- 10.4.13 Any actual expense related to the operation, maintenance, or repair of the ATMs or Locations or liability incurred by City for the account of Licensee, such as payment of insurance premiums by City, if Licensee defaults, and City is allowed by law to provide such payment of insurance premiums for the protection of Location(s), may be deemed to be additional Fees and the same may, at the option of City, be added to any Fees then due or thereafter falling due hereunder.
- 10.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to

prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

XI. NOTICE

~~11.1~~ Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

City Address for Notices:

City of San Antonio, Attn: Janie Cantu, Director, Purchasing & General Services Dept.,
P.O. Box 839966, San Antonio, Texas 7828303966.

Licensee Address for Notices:

Generations Federal Credit Union, Attn: Wes Barnett, Chief Information Officer, 123 N.
Medina, San Antonio, Texas 78207.

XII. CONDEMNATION

12.1 In the event that a specific Location is taken, in whole or in part, by a governmental entity, and the taking materially deprives Licensee of its rights to use the remaining part of said specific Location, if any, and any other rights pursuant to this Agreement, either party may, upon 30 days prior written notice to the other, terminate this Agreement as to said Location. City shall be entitled to receive the entire condemnation award. However, Licensee shall have the right to pursue in the condemnation proceedings, a separate claim arising from the taking or condemnation as it affects Licensee's rights hereunder, limited to damage to any improvements made to the specific Location by Licensee.

XIII. INSURANCE

13.1 Prior to the commencement of any work under this Agreement, Licensee shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Purchasing & General Services Department, which shall be clearly labeled "Automated Teller Machine Agreement" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. 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, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Purchasing & General Services Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

13.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof 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 this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

13.3 A Licensee's financial integrity is of interest to the City; therefore, subject to Licensee's right to maintain reasonable deductibles in such amounts as are approved by the City, Licensee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Licensee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence. If AOA operation is required, \$5,000,000 per occurrence is necessary.
5. Property	Must maintain all risk property insurance in the amount of the full replacement cost.
6. All Risk Blanket Builder Risk	Must provide risk insurance to cover materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility.

13.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Licensee shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Licensee shall pay any costs incurred resulting from said changes.

City of San Antonio, Attn: Purchasing & General Services Department, P.O. Box 839966,
San Antonio, Texas 78283-3966.

13.5 Licensee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, 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;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

13.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Licensee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Licensee's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

13.7 If Licensee fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Licensee to maintain said insurance or secure such endorsement. In addition to any other remedies the

City may have upon Licensee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Licensee to stop work hereunder, and/or withhold any payment(s) which become due to Licensee hereunder until Licensee demonstrates compliance with the requirements hereof.

~~13.8 Nothing herein contained shall be construed as limiting in any way the extent to which Licensee may be held responsible for payments of damages to persons or property resulting from Licensee's or its subcontractors' performance of the work covered under this Agreement.~~

13.9 It is agreed that Licensee's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

13.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

XIV. INDEMNIFICATION

14.1 LICENSEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LICENSEE'S activities under this Agreement, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LICENSEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. 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 LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

14.2 The provisions of this INDEMNITY 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. LICENSEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE's activities under this AGREEMENT and shall see to the investigation and

defense of such claim or demand at LICENSEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LICENSEE of any of its obligations under this paragraph.

- 14.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by LICENSEE in fulfilling its obligation hereunder to defend and indemnify City, ~~unless such right is expressly waived by City in writing. LICENSEE shall retain City~~ approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If LICENSEE fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and LICENSEE shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 14.4 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of LICENSEE, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for LICENSEE or any subcontractor under worker's compensation or other employee benefit acts.

XV. ASSIGNMENT AND SUBCONTRACTING

- 15.1 This Agreement is a personal License and shall not be assigned or sublicensed by Licensee, other than to its parent entity, or to any corporation with which Licensee may merge or consolidate, or which may succeed to controlling interest in the business of Licensee or to a first, without the prior written consent of Director. Licensee agrees to notify City in writing in advance of any permissible assignment or sublicense, even though City consent is not required
- 15.2 Licensee shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Licensee. Licensee, its employees or its subcontractors shall perform all necessary work.
- 15.3 It is City's understanding and this Agreement is made in reliance thereon, that Licensee intends to use the following subcontractors in the performance of this Agreement: Diebold, Inc., Ventus Networks, General Neon Sign Co., Alamo Integrated Systems, Inc., and CDI Technology Services. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director in writing, prior to the provision of any services by said subcontractor. If the subcontractor that Licensee wishes to change is also part of Licensee's SBEDA Plan, such change requires the advance written approval of both Director and City's SBEDA Program Manager.

- 15.4 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Licensee. City shall in no event be obligated to any third party, including any subcontractor of Licensee, for performance of services or payment of fees. Any references in this Agreement to a subcontractor, ~~indicate only such an entity as has been approved by Director, and where required, City's SBEDA Program Manager.~~
- 15.5 Except as otherwise stated herein, Licensee may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of Director. As a condition of such consent, if granted, Licensee shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Licensee, assignee, transferee or subcontractor.
- 15.6 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Licensee assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement without consent where required, City may, at its option, cancel this Agreement and all rights, titles and interest of Licensee shall thereupon cease and terminate, in accordance with Article X. Termination, notwithstanding any other remedy available to City under this Agreement. Director shall have the authority to effect such termination. The violation of this provision by Licensee shall in no event release Licensee from any obligation under the terms of this Agreement, nor shall it relieve or release Licensee from the payment of any damages to City, which City sustains as a result of such violation.

XVI. INDEPENDENT CONTRACTOR

- 16.1 Licensee covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Licensee shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Licensee, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Licensee. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Licensee under this Agreement and that the Licensee has no authority to bind the City.

XVII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

- 17.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:
- 17.2 SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.
- 17.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.
- 17.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.
- 17.5 SBEDA Plan – The Good Faith Effort Plan ("GFEP"), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Licensee's bid for this project Agreement, attached hereto and incorporated herein as "Attachment A".
- 17.6 For this Agreement, the Parties agree that:
- 17.6.1 The terms of the City's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this Agreement by reference; and
- 17.6.2 The failure of Licensee or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.

17.6.3 Failure of Licensee or any applicable SE to provide any documentation or written submissions required by the City Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.

~~17.6.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Licensee's SBEDA Plan ("Attachment A") shall constitute a material breach of the SBEDA Program and this Agreement.~~

17.6.5 Licensee shall pay all suppliers and subcontractors identified in its SBEDA Plan ("Attachment A") in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by Licensee to the CITY Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

17.7 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement:

17.7.1 Failure of Licensee to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function; or

17.7.2 Modification or elimination by Licensee of all or a portion of the scope of work attributable to an SE upon which the Agreement was awarded; or

17.7.3 Termination by Licensee of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or

17.7.4 Participation by Licensee in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement.

17.8 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the City may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the City shall be entitled, at its election, to exercise any one or more of the following remedies if the Licensee materially breaches the requirements of the SBEDA Program:

- 17.8.1 Terminate this Agreement for default;
- 17.8.2 Suspend this Agreement for default;
- 17.8.3 Withhold all payments due to the Licensee under this Agreement until such ~~violation has been fully-cured or the Parties have reached a mutually agreeable~~ resolution; and/or
- 17.8.4 Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the City pursuant to the Agreement, or from any other amounts due to the Licensee under the Agreement.
- 17.8.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.
- 17.9 The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Agreement.
- 17.10 The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
- 17.11 City Process for Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the City to exercise in the event a Licensee violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

17.12 Special Provisions for Extension of Agreements. In the event the City extends this Agreement without a competitive Bid or Proposal process, the City Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:

17.12.1 a SBEDA Utilization Goal for the extended period; and

17.12.2 a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if Licensee does not meet the SBEDA Utilization Goal; and

17.12.3 the required minimum Good Faith Efforts outreach attempts that Licensee shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The Licensee entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:

(i) subject Licensee to any of the remedies listed above; and/or

(ii) result in a new bid or proposal request of the Agreement that was considered for extension.

XVIII. CONFLICT OF INTEREST

18.1 Licensee acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

18.2 Pursuant to the subsection above, Licensee warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Licensee further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIX. AMENDMENTS

- 19.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Licensee. The City Manager, her designee or the Director of Purchasing & General Services shall have authority to execute amendments on behalf of the City without further action by the City Council, except where the amendment pertains to the fee paid by Licensee to the City under this Agreement.

XX. SEVERABILITY

- 20.1 If any clause or provision of this Agreement 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 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 that the remainder of this Agreement 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 that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI. LICENSES/CERTIFICATIONS

- 21.1 Licensee warrants and certifies that Licensee 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. Licensee shall pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state and local taxes and fees, which are due now or may hereafter be levied upon any of the ATMs at each Location, or upon Licensee, or upon the business conducted by Licensee on the Locations, or upon any of Licensee's properties used in connection therewith, and shall maintain, in current status, all federal, state and local licenses and permits required for the operation of the business conducted by Licensee.

XXII. COMPLIANCE

- 22.1 Licensee shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations and shall indemnify and hold harmless City, its elected officials, employees, officers, directors, and representatives, from any and all charges, fines or penalties that may be assessed or levied by any department or agency of the United States or the State of Texas by reason of

Licensee's failure to comply with the terms of this Article or with any other terms set forth in this Agreement.

XXIII. NONWAIVER OF PERFORMANCE

~~23.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XIX. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.~~

XXIV. LAW APPLICABLE

24.1 THIS AGREEMENT 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.

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

XXV. LEGAL AUTHORITY

25.1 The signer of this Agreement for Licensee represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Licensee and to bind Licensee to all of the terms, conditions, provisions and obligations herein contained.

XXVI. PARTIES BOUND

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

XXVII. CAPTIONS

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

XXVIII. INCORPORATION OF EXHIBITS

- 28.1 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

- 28.1.1 Attachment A – SBEDA Plan
- 28.1.2 Attachment B -1 - Prevailing Wage Rates (Construction Types: Heavy and Highway)
- 28.1.3 Attachment B-2 - Prevailing Wage Rates (Construction Types: Building)
- 28.1.3 Attachment C – ATM Remittance Form

XXIX. PERFORMANCE BOND

- 29.1 As security for Licensee's obligations hereunder, Licensee shall provide a performance bond, in a form approved by the City, made payable to the City of San Antonio, executed by a corporate surety acceptable to City who is licensed pursuant to the Texas Insurance Code and listed on the United States Department of the Treasury's Listing of Approved Sureties (Dept Circular 570) in the amount of \$200,000. Said performance bond must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. The performance bond must clearly and prominently display on the bond or on an attachment to the bond: (1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or (2) the toll-free telephone number maintained by the Texas Department of Insurance under §521.051, Texas Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.
- 29.2 In lieu of a performance bond, Licensee may provide an irrevocable, standby letter of credit in the amount of \$200,000. Such letter of credit must be in form and content approved by City, and issued by a commercial banking institution acceptable to City and authorized to conduct business in Texas, and conditioned on its automatic restoration in the event of a draw down by City.
- 29.3 Licensee shall provide the security described in this article for the duration of the Agreement, including all renewals; and should Licensee holdover, then for the duration of the holdover period.

XXX. ENTIRE AGREEMENT

30.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, 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 Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIX. Amendments.

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

**LICENSEE
GENERATIONS COMMUNITY
FEDERAL CREDIT UNION**

(Signature)

Wes Barnett

(Signature)

Printed Name: _____
Title: _____
Date: _____

Printed Name: Wes Barnett
Title: Chief Information Officer
Date: August 27, 2008

Approved as to Form:

City Attorney



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 8
Council Meeting Date: 10/2/2008
RFCA Tracking No: R-3917

DEPARTMENT: Purchasing and General Services

DEPARTMENT HEAD: Janie Cantu

COUNCIL DISTRICT(S) IMPACTED:
City Wide

SUBJECT:
Automated Teller Machine (ATM) Services Concession

SUMMARY:

This ordinance authorizes a revenue contract with Generations Community Federal Credit Union, to provide the Purchasing & General Services Department with a concession agreement to provide twenty (20) Automated Teller Machines (ATM), for total estimated revenue of \$456,570.00 over the life of the five (5) year agreement.

BACKGROUND INFORMATION:

Submitted for City Council consideration and action is the proposal submitted by Generations Community Federal Credit Union to provide twenty (20) Automated Teller Machines (ATM), for the City of San Antonio for a total estimated revenue of \$456,570.00 over the life of the five (5) year agreement.

A Request for Proposal for ATM Services Concession was issued by the Purchasing & General Services Department. Two (2) responses were received and evaluated based on the criteria of experience, background, qualifications, proposed plan, financial offer and the Small Business Economic Development Advocacy Program (SBEDA). Staff from the departments of Aviation, Downtown Operations, Convention, Sports and Entertainment Facilities, and Purchasing & General Services evaluated the proposals. The committee selected Generations Community Federal Credit Union, the highest ranked proposal response, and is recommending award for the revenue contract.

Generations Community Federal Credit Union is the current service provider and supplies all materials and equipment necessary to perform all services described for automated teller machine services. Generations Community Federal Credit Union possesses all licenses and/or certifications to perform the ATM services.

Currently, ATMs are available at sixteen (16) locations under an expiring contract with the recommended award recipient. This agreement would include an additional four (4) ATMs at Riverview Towers, Centro Info Center, and the Farmers Market Plaza.

ISSUE:

This revenue contract provides for concession agreement for automated teller machines (ATM) at various sites to serve pedestrian foot traffic, conventioners, citizens, and employees at twenty (20) sites operated by the City of San Antonio.

The recommended Respondent will provide all equipment and ensure that the equipment is stocked, serviced and maintained on a continual and routine basis and in proper working order on a 24-hour, seven days per week basis. Additional services upon staff request will be provided at certain downtown locations during special events, such as Fiesta, and the NCAA Final Four.

The ATM services will provide banking transactions, including, but not limited to Cash Withdrawal and Deposit services, Account/Balance Inquiries, Fund Transfers, Credit Card Advances and other transactions as permitted by the governing network regulations.

City Council approval is sought to enter into a five (5) year city-wide revenue contract that would benefit the General Fund, Facility Services Fund, the Hotel-Motel, and the Airport Fund. The revenue over the life of this agreement is anticipated at \$456,570.00. A Renewal Agreement would allow for an additional five (5) year term, which would project additional revenue of \$456,570.00.

ALTERNATIVES:

Should this contract not be approved, the Purchasing & General Services Department will be required to continue on a month-to-month hold over agreement with Generations Community Federal Credit Union wherein a decreased rated of return would be realized.

FISCAL IMPACT:

Revenue will be based on actual use of the ATM services. Staff projects the following based on past usage and new proposed terms; Airport Operation & Maintenance Fund, \$24,030.00, General Fund, \$24,030.00, Community and Visitor Facilities Fund, \$72,090.00, and the Facility Services Fund, \$336,420.00, for a total estimate revenue of \$456,570.00.

The existing ATM agreement is on a month-to-month hold over with Generations Community Credit Union, however, the proposed agreement is more advantageous to the City with a payment of 50% of non-member transaction fees compared to the current payment rate 40% with a \$200.00 monthly license fee. The proposed payment terms anticipate a 6% increase in revenue.

RECOMMENDATION:

Staff recommends the approval of this revenue agreement with Generations Community Federal Credit Union for Automated Teller Machines (ATM). The total estimated revenue for this contract is for \$456,570.00 over the life of the five (5) year agreement.

ATTACHMENT(S):

File Description	File Name
Contract	ATM Services Concession Contract.pdf
Scoring Matrix	#3917 ATM Services Concession - Score Matrix Summary.pdf
Voting Results	
Ordinance/Supplemental Documents	200810020873.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Steve Morando Assistant Director Purchasing & General Services

APPROVED FOR COUNCIL CONSIDERATION:

Sharon De La Garza Assistant City Manager