

ORDINANCE 2020-01-30-0042

**APPROVING AMENDMENTS AND A RENEWAL TO THE AUTOMATED TELLER MACHINE LICENSE AGREEMENT WITH CARDTRONICS USA, INC. TO PROVIDE ATMS AT CITY-OWNED LOCATIONS BY EXTENDING THE CONTRACT FOR AN ADDITIONAL TWO YEARS BEGINNING JANUARY 1, 2020 WITH AN OPTION TO RENEW FOR TWO (2) SUCCESSIVE ONE (1) YEAR TERMS, WITH ANNUAL REVENUE-SHARE ESTIMATED AT \$64,000 PER ANNUM TO BE DEPOSITED INTO THE COMMUNITY & VISITOR FACILITIES FUND AND GENERAL FUND IN ACCORDANCE WITH THE FY 2020 ADOPTED BUDGET.**

\* \* \* \* \*

**WHEREAS**, pursuant to Ordinance Number 2010-10-21-0919, passed and approved October 21, 2010, the City entered into that certain *Automated Teller Machine License Agreement* ("Agreement") with **CARDTRONICS USA, INC.** ("Cardtronics"); and

**WHEREAS**, City and Cardtronics entered into that certain *First Amendment to Automated Teller Machine License Agreement* ("First Amendment") dated September 15, 2011; and

**WHEREAS**, City and Cardtronics entered in that certain *Extension Agreement and Second Amendment to Automated Teller Machine License Agreement* ("Extension Agreement and Second Amendment") pursuant to Ordinance No. 2013-11-21-0814, passed and approved November 21, 2013; and

**WHEREAS**, City and Cardtronics entered into that certain *Third Amendment to Automated Teller Machine License Agreement* ("Third Amendment") pursuant to Ordinance No. 2014-06-19-0444, passed and approved June 19, 2014; and

**WHEREAS**, City and Cardtronics entered into that certain *Memorandum of Understanding* dated August 21, 2014; and

**WHEREAS**, City and Cardtronics entered into that certain *Administrative Amendment No. 4 to Automated Teller Machine License Agreement* ("Fourth Amendment") on June 5, 2015; and

**WHEREAS**, City and Cardtronics entered into that certain *Administrative Amendment No. 5 to Automated Teller Machine License Agreement* ("Fifth Amendment") on April 20, 2016; and

**WHEREAS**, City and Cardtronics entered into that certain *Administrative Amendment No. 6 to Automated Teller Machine License Agreement* ("Sixth Amendment") on September 7, 2017; and

**WHEREAS**, City and Cardtronics entered into that certain letter agreement dated as of October 1, 2019, pursuant to which the term of the Agreement was extended through December 31, 2019 on the same terms and conditions; and

**WHEREAS**, City and Cardtronics entered into that certain letter agreement dated as of January 1, 2020, pursuant to which the term of the Agreement was extended through January 31, 2020 on the same terms and conditions; and

**WHEREAS**, City and Cardtronics desire to amend the Agreement as it has been heretofore amended to (1) increase the Transaction Fee for withdrawal transactions under the Agreement, (2) revise the method of calculation of the License Fee to a flat rate percentage on a tiered structure based upon number of withdrawal transactions, and (3) add limitation of liability language similar to the Cardtronics ATM contract at the Airport; and

**WHEREAS**, City and Cardtronics also desire to further amend the Agreement to provide for a two (2) year renewal term, which shall commence on January 1, 2020 and end on December 31, 2022, with two (2) successive one (1) year renewal terms; and

**WHEREAS**, City Staff recommends (1) that the amendments to the Agreement as described above be approved; (2) that the Agreement as amended be extended for a term beginning January 1, 2020 and ending December 31, 2022; and (3) that the extension of the Agreement through January 31, 2020 be ratified and confirmed in all things; and

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

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

**SECTION 1.** The terms and conditions of *Amendment No. 7 to Automated Teller Machine License Agreement* ("Seventh Amendment") as described above are hereby approved. The extension of the Agreement as so amended for a term beginning January 1, 2020 and ending December 31, 2022 is also hereby approved.

The City Manager, or his designee, or the Deputy Chief Financial Officer, or his designee, are each hereby authorized eight (8) business days from the effective date of this Ordinance within which to negotiate and execute the Seventh Amendment, substantially according to the terms and conditions set forth in **Attachment I** to this Ordinance. If the Seventh Amendment is not negotiated and executed within said eight (8) business days, or if the parties cannot agree to terms of such document within such time, then there shall be no authority to execute the Seventh Amendment unless there is subsequent City Council approval.

**SECTION 2.** The execution of the letter agreements extending the term of the Agreement for (a) three months, from October 1, 2019 through December 31, 2019, and (b) one month, from January 1, 2020 to January 31, 2020, on the same terms and conditions, are hereby ratified and



confirmed in all things. All actions taken on behalf of the City in connection with the Agreement during the extended terms are hereby ratified and confirmed in all things.

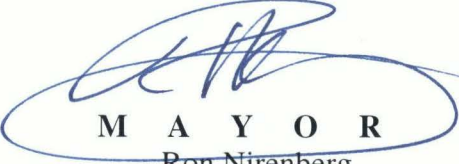
**SECTION 3.** Funds generated by this Ordinance will be deposited per the table below:

Fund No.	Internal Order No.	General Ledger Account
11001000	207000000809	4401131
29016000	245000000030	4401131
29006000	242000000001	4401131

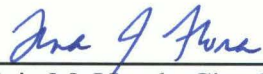
**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This Ordinance is effective immediately, upon passage by eight (8) affirmative votes; otherwise, said effective date shall be ten (10) days from the date of passage hereof.


**PASSED and APPROVED** this 30<sup>th</sup> day of January, 2020.

  
**M A Y O R**  
Ron Nirenberg

**ATTEST:**

  
for Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
Andrew Segovia, City Attorney



# City of San Antonio

## City Council

January 30, 2020

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**Item: 5**

**Enactment Number:**

**File Number: 19-7965**

**2020-01-30-0042**

Ordinance approving amendments and a renewal to the Automated Teller Machine (ATM) contract with Cardtronics USA, Inc. to provide ATMs at City-owned locations extending the contract for an additional two years with an option to renew. Annual revenue-share estimated at \$64,000 per annum will be deposited into the Community & Visitor Facilities Fund and General Fund in accordance with the FY 2020 Adopted Budget. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer, Finance]

passed

**Aye:** 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia, Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

RKN  
01/30/20  
Item No. 5

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

**AMENDMENT NO. 7  
TO  
AUTOMATED TELLER MACHINE LICENSE  
AGREEMENT**

This *Amendment No. 7 to AUTOMATED TELLER MACHINE LICENSE AGREEMENT* ("Seventh Amendment") is made and entered into by and between the **CITY OF SAN ANTONIO** ("City"), a Texas municipal corporation acting by and through its Deputy Chief Financial Officer, and **CARDTRONICS USA, INC.** ("Licensee"), a Delaware Corporation authorized to conduct business in the State of Texas, acting by and through its authorized representative as indicated below (City and Licensee collectively hereinafter referred to as "parties").

**WHEREAS**, the parties entered into that certain *Automated Teller Machine License Agreement* ("Agreement") pursuant to Ordinance Number 2010-10-21-0919, passed and approved October 21, 2010; and

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

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

**WHEREAS**, City and Licensee entered into that certain *Third Amendment to Automated Teller Machine License Agreement* ("Third Amendment") pursuant to Ordinance No. 2014-06-19-0444, passed and approved June 19, 2014; and

**WHEREAS**, City and Licensee entered into that certain *Memorandum of Understanding* dated August 21, 2014; and

**WHEREAS**, City and Licensee entered into that certain *Administrative Amendment No. 4 to Automated Teller Machine License Agreement* ("Fourth Amendment") on June 5, 2015; and

**WHEREAS**, City and Licensee entered into that certain *Administrative Amendment No. 5 to Automated Teller Machine License Agreement* ("Fifth Amendment") on April 20, 2016; and

**WHEREAS**, City and Licensee entered into that certain *Administrative Amendment No. 6 to Automated Teller Machine License Agreement* ("Sixth Amendment") on September 7, 2017;

**WHEREAS**, City and Licensee entered into that certain *3-Month Extension* ("Extension") on October 1, 2019 that extended the term of the Agreement until December 31, 2019; and,





WHEREAS, City and Licensee entered into that certain *1-Month Extension* ("Additional Extension") on December 23, 2019 that extended the term of the Agreement until January 31, 2020; and

WHEREAS, the parties desire to amend the Agreement as it has been heretofore amended to (1) increase the Transaction Fee for any type of withdrawal transaction under the Agreement as set forth in Section A below and (2) revise the method of calculation of the License Fee to be paid by Licensee to City under the Agreement so that it will be a flat rate percentage on a tiered structure based upon total number of withdrawal transactions from all Permanent ATMs and Additional ATMs now or hereafter subject to this Agreement each month; and

WHEREAS, the parties also desire to further amend the Agreement to provide for a two (2) year renewal term, which shall commence on January 1, 2020 and end on December 31, 2022, with a two (2) successive one (1) year renewal terms, as more fully set forth in Section G below;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, City and Licensee agree to amend the Agreement as follows:

- A. Section 2.2.1 is deleted in its entirety and replaced with "Licensed Premises as stated in Exhibit D"
- B. Section 2.3.1 of the Agreement is deleted in its entirety and replaced with the following:  
"Licensed Premises are stated in Exhibit D."
- C. Section 5.12, as stated in the Third Amendment, shall apply to the locations listed in Section 2.3.1 of this Seventh Amendment.
- D. Section 5.1.2 of the Agreement is hereby amended so that it shall hereafter read as follows:  
  
"5.1.2 Licensee shall charge \$3.00 for any type of withdrawal transaction ("Transaction Fee");
- E. Section 5.2 of the Agreement is hereby amended so that it shall hereafter read as follows and apply to the locations listed in Section 2.3.1 of this Seventh Amendment:  
  
"5.2 License Fees. Licensee shall pay to City a License Fee that is a flat rate percentage on a tiered structure based upon the average number of withdrawal transactions from all the locations, in the aggregate, listed in Section 2.3.1 of this Seventh Amendment and Additional ATMs now or hereafter subject to this Agreement. The License Fee shall be calculated in accordance with the following schedule:



Monthly Surcharge Withdrawals	Percentage of Transaction Fee
0 – 99	0%
100	25%
200	50%
250	55%
300	60%
400 +	65%

In addition, Licensee shall pay to City a License Fee of fifty percent (50% of all gross revenue collected from Alternate Transactions.”

- F. Section 5.3 of the Agreement is hereby amended so that it shall hereafter read as follows:

“Change in Transaction Fee. Licensee may only change Transactions Fees with prior City approval.”

- G. Section N of the Third Amendment is hereby amended so that is shall hereafter read as follows:

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

The term of this Seventh Amendment shall begin on January 1, 2020 and end on December 31, 2022. The term of this Seventh Amendment will renew twice for successive one (1) year terms each (“Renewal Term”) unless written notice of non-renewal is provided by the non-renewing party to the other party at least one hundred eighty (180) days prior to the expiration of the then-current Renewal Term.

- H. Licensee at its sole cost and expense shall bolt the applicable ATMs, as stated in Exhibit D, at the Licensed Premises in accordance with the following criteria:

City represents and warrants that the Licensed Premises are in Proper Condition for the installation of ATMs, and, to the extent a Licensed Premise is not in Proper Condition, City, shall be responsible for all expenses to upgrade the Licensed Premises to meet the Proper Condition requirement. “Proper Condition” means that each Licensed Premise will allow for the installation of anchoring bolts to a depth of six inches (6”) into the floor without any harm or damage to any plumbing or electrical works encased in the floor; and, provide, maintain and relocate, if necessary, electric service, and an operating 110 volt electrical power outlet, or an isolated and dedicated circuit with hard ground for a hard-wired connection to the ATM, both within





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two feet (2') of Premises, and, where applicable, a connection to a communication system or telephone jack.

I. The following is added to the Agreement:

**Limitation of Liability.** UNDER NO CIRCUMSTANCES WILL LICENSEE'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED TWO (2) TIMES THE ANNUAL REVENUE EARNED BY LICENSEE HEREUNDER. ADDITIONALLY, NEITHER PARTY WILL BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, WHETHER ARISING UNDER CONTRACT, TORT, STRICT LIABILITY, OR OTHER FORM OF ACTION BY, THROUGH OR UNDER THIS AGREEMENT, WHETHER OR NOT CARDTRONICS HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

Except as heretofore amended and as amended by this Seventh Amendment, all of the terms and provisions of the Agreement between the parties shall remain in full force and effect.

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In witness whereof, the parties, personally or by their duly authorized agents, have executed this Seventh Amendment to be effective as of January 1, 2020.

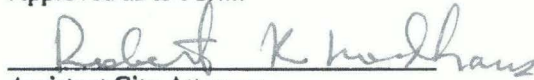
**CITY OF SAN ANTONIO**

  
Troy Elliott  
Deputy Chief Financial Officer

**CARDTRONICS USA, INC.**

 Steve Kaip  
SVP, NABU Ret. 1  
Bill Knoll  
SVP, North America Finance

Approved as to Form:

  
Assistant City Attorney

**SIGNATURE PAGE TO AMENDMENT NO. 7 TO AUTOMATED TELLER  
MACHINE LICENSE AGREEMENT**



**EXHIBIT D**  
**Licensed Premises**

<b>CITY OF SAN ANTONIO</b>	<b>LOCATION NAME</b>	<b>BOLTING</b>
CT004362	CITY OF SAN ANTONIO - EL MERCADO @ MARKET SQUARE	REQUIRED
CT004364	CITY OF SAN ANTONIO - POLICE HQ SANTA ROSA	EXEMPT
CT004367	CITY OF SAN ANTONIO - FARMERS MARKET PLAZA #1	REQUIRED
CT005261	CITY OF SAN ANTONIO - RIVERVIEW TOWERS	EXEMPT
CT008280	CITY OF SAN ANTONIO - ONE STOP SERVICE CTR	REQUIRED
P373230	CITY OF SAN ANTONIO - MARKET SQUARE	REQUIRED
P373231	CITY OF SAN ANTONIO - MUNICIPAL COURTHOUSE	REQUIRED
CT004376	CITY OF SAN ANTONIO - CONV CTR #2 LILA COCKRELL THEATER	EXEMPT
CT005407	CITY OF SAN ANTONIO - HENRY B GONZALEZ CONVENTION CTR	EXEMPT

<b>ALAMODOME</b>	<b>LOCATION NAME</b>	<b>BOLTING</b>
CT001134	ALAMODOME - NORTH FIELD LEVEL	REQUIRED
CT001156	ALAMODOME - NORTH CLUB LEVEL #1	REQUIRED
CT001158	ALAMODOME - SOUTHEAST PLAZA LEVEL	REQUIRED
CT001163	ALAMODOME - WEST PLAZA LEVEL - 2	REQUIRED
CT001164	ALAMODOME - EAST PLAZA LEVEL - 2	REQUIRED
CT001171	ALAMODOME - NORTH UPPER LEVEL	REQUIRED
CT001205	ALAMODOME - PLAZA LEVEL NORTHWEST	REQUIRED

