

AN ORDINANCE

2006-03-09-0306

AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT AND ONE-YEAR EXTENSION OF THE UTILITY SERVICE LICENSE AGREEMENTS WITH EDLEN ELECTRICAL EXHIBITION SERVICES OF TEXAS, INC. AND HARPER WOOD ELECTRIC COMPANY TO PROVIDE UTILITY SERVICES INCLUDING ELECTRICAL POWER, WATER AND COMPRESSED AIR FOR EVENTS AT THE CONVENTION FACILITIES, ALAMODOME AND NELSON W. WOLFF MUNICIPAL STADIUM COMMENCING ON MARCH 15, 2006 AND TERMINATING ON MARCH 14, 2007.

* * * * *

WHEREAS, on February 27, 2003, the City Council passed and approved Ordinance No. 97238 which awarded two individual Utility Service License Agreements (the "Agreements") to Edlen Electrical Exhibition Services of Texas, Inc. ("Edlen") and Harper Wood Electric Company ("Harper Wood") to provide utility services including electrical power, water and compressed air on a non-exclusive basis for events at the Convention Facilities, Alamodome and Nelson W. Wolff Municipal Stadium; and

WHEREAS, by the terms of the Agreements a license fee of 25% of gross revenue is paid to the City for work performed by Edlen and Harper Wood at these City facilities; and

WHEREAS, the Agreements further provides for a one-year renewal at the City's option should the Directors of the Convention Facilities Department and Alamodome deem such renewal to be in the best interest of the City; and

WHEREAS, in assessing this renewal option, City staff conducted a survey of utility service license agreements and the fees received by other convention centers including Las Vegas, San Francisco, Miami, San Diego, Phoenix, and Houston the results of which indicated that the City's current license fee is slightly below the average of 26.5%; and

WHEREAS, to remain competitive both Edlen and Harper Wood have offered an increase in the City's license fee from 25% to 30% of gross revenue for events contracted during the renewal period; and

WHEREAS, the Directors of the Convention Facilities Department and Alamodome recommend that the City Council now renew these License Agreements and amend them to provide for a 30% license fee to be paid to the City; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of an amendment and one-year extension of the Utility Service License Agreements with Edlen Electrical Exhibition Services of Texas, Inc. and Harper Wood Electric Company to provide utility services including electrical power, water and compressed air for events at the Convention Facilities, Alamodome and Nelson W. Wolff Municipal Stadium are approved.

SECTION 2. The City Manager, or her designee, is authorized to execute the First Renewal and Amendment to the Utility Service License Agreement with Edlen Electrical Exhibition Services of Texas, Inc. and Harper Wood Electric Company. A copy of the First Renewal and Amendment in substantially its final form is attached and made a part of this Ordinance as Exhibit A.

SECTION 3. Funds received from the First Renewal and Amendment to the Utility Service License Agreement shall be deposited as follows:

(a) Convention Facilities - Fund 29006000 HOTEL MOTEL TAX FUND, Internal Order 242000000270 CONVENTION CTR-ELECTRICAL General Ledger 4407724 Commission from Contracts – Trade;

(b) Alamodome - Fund 29016000 HOT / ALAMODOME Internal Order 245000000030 ALAMODOME General Ledger 4407724 Commission from Contracts – Trade;

(c) Nelson W. Wolff Municipal Stadium - Fund 29068000 WOLFF STADIUM, Internal Order 245000000035, WOLFF STADIUM, General Ledger 4407724 Commission from Contracts – Trade.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall become effective immediately upon its passage by eight affirmative votes and if not upon eight affirmative votes then upon ten days following its passage.

PASSED AND APPROVED this 9th day of MARCH 2006.



M A Y O R

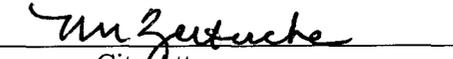
PHIL HARDBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney

for

EXHIBIT A

**FIRST RENEWAL AND AMENDMENT TO THE HENRY B. GONZALEZ
CONVENTION CENTER UTILITY SERVICES AGREEMENT**

BETWEEN THE CITY OF SAN ANTONIO AND CONTRACTOR

This FIRST RENEWAL AND AMENDMENT to the HENRY B. GONZALEZ CONVENTION CENTER UTILITY SERVICE AGREEMENT (this "RENEWAL") is entered into by and between the CITY OF SAN ANTONIO ("City") and CONTRACTOR together referred to as "the Parties."

RECITALS

A. City and CONTRACTOR are parties to that certain UTILITY SERVICE AGREEMENT authorized by City of San Antonio Ordinance No. 97238, passed and approved on February 27, 2003, and made effective by both Parties on March 15, 2003 (the "AGREEMENT").

B. Prior to the effectiveness of this RENEWAL, the AGREEMENT, in accordance with Article X, Section 10.1 of the AGREEMENT, terminates at midnight central standard time on March 15, 2006 and in accordance with Article III, Section 3.1 paid to City a commission of twenty-five percent (25%).

C. City and CONTRACTOR desire to renew the AGREEMENT as provided in Article X, Section 10.3 of the AGREEMENT and amend the AGREEMENT in accordance with the terms and conditions of this RENEWAL as described in below.

D. Contractor is not in default of the AGREEMENT and the Directors of the Convention Facilities Department and Alamodome of the City of San Antonio have determined that it is in the best interest of the City to enter into this RENEWAL.

E. All other provisions of the AGREEMENT shall remain in full force and effect.

RENEWAL

NOW THEREFORE, in accordance with Article X, Section 10.3 and Article XIII, Section 13.10 of the AGREEMENT, City and CONTRACTOR hereby agree and amend as follows:

1. Definitions. All capitalized terms used in this RENEWAL without definition herein shall have the meanings assigned to such terms in the AGREEMENT.
2. Renewal. In accordance with Article X, Section 10.3 of the AGREEMENT, the AGREEMENT is hereby renewed for a period of one (1) year, terminating on March 15, 2007 with no additional renewal option available.

3. Amendment. The Parties hereby agree to amend Article III, Section 3.1 as follows:

(a) The first paragraph of Section 3.1 is hereby deleted in its entirety and replaced with the following:

In exchange for the rights granted herein Contractor will pay to City with respect to Contractor's Gross Receipts from the Services conducted by Contractor pursuant to the terms of the License during each Month of the term of this Agreement (being herein called the "License Fee") thirty-percent (30%) of the Gross Receipts received by Contractor from the provision of Services, less only any sales or other taxes collected in connection with the provision of Services and paid to the appropriate taxing authority. This payment shall be computed from the gross revenue appearing on Contractor's invoices to Tenants prior to any taxes. Contractor is precluded by this Agreement from disclosing, in any fashion, written or otherwise, the percentage of revenue paid to City.

(b) The second paragraph of Section 3.1 remains unchanged and in full force and effect.

4. Effective Date. This RENEWAL shall be effective March 16, 2006. Proposals listed in Exhibit A (attached and made a part of this RENEWAL) shall be exempted from the amended terms as described in Section 3(a) of this RENEWAL.

5. No Other Changes. Except as specifically set forth in this RENEWAL, all of the terms and conditions of the AGREEMENT shall remain the same and are hereby ratified and confirmed. The AGREEMENT shall continue in full force and effect and with this RENEWAL shall be read and construed as one instrument.

6. Choice of Law. This RENEWAL shall be construed in accordance with and governed by the laws of the State of Texas.

7. Counterparts. This RENEWAL may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this RENEWAL it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

Signatures appear on next page.

IN WITNESS HEREOF, the parties hereto have executed in duplicate originals this RENEWAL on the ____ day of _____ 2006.

CITY OF SAN ANTONIO
a municipal corporation

CONTRACTOR
a _____ corporation

Michael Sawaya
Director
Convention Facilities Department
City of San Antonio

Name:
Title:

Michael Abington
Director
Alamodome
City of San Antonio

APPROVED AS TO FORM:

Michael D. Bernard
City Attorney