

AN ORDINANCE 2006-06-29-0815

**AUTHORIZING AN AMENDMENT TO THE
PROFESSIONAL SERVICES AGREEMENT FOR THE
MUNICIPAL MARKETING PARTNERSHIP PROGRAM
WITH ACTIVE NETWORK, INC.**

* * * * *

WHEREAS, as part of the Fiscal Year 2005-2006 Budget, the City initiated a comprehensive and integrated Municipal Marketing Partnership Program (“Program”) to identify opportunities and strategies that would allow the City to generate cash, goods and services over a specified amount of time and the City hired Active Network, Inc. (“Active”) to develop a plan and assist with implementation of the Program; and

WHEREAS, due to the approaching expiration of the current agreements, beverage and snack services, specifically vending and pouring rights, were identified as the initial partnership opportunity under the Program and a Request for Proposals (“RFP”) was released resulting in responses from the San Antonio Coca-Cola Bottling Company and Bottling Group, L.L.C. for beverage services and Independent Vendors of San Antonio for snack services; and

WHEREAS, during the RFP process, Active assisted staff with the identification of potential vending locations and clarification of offers; and

WHEREAS, the proposed First Amendment to the Professional Services Agreement for the Municipal Marketing Partnership Program allows Active to retain the \$30,000.00 originally paid for the plan, which was to be returned as a rebate over term of resulting vending agreements, and the \$60,000.00 paid over the last year to assist staff and it also reduces the consideration to be paid to Active from ten percent (10%) of gross revenues over the entire term of the license for beverage vending services to ten percent (10%) of gross revenue for only the first three (3) years of the license for beverage vending services, commensurate with the quantity of work performed by Active; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the First Amendment to the Professional Services Agreement for the Municipal Marketing Partnership Program with Active are authorized and approved.

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Item #8B

SECTION 2. The City Manager, or a designee, is authorized to execute the First Amendment to the Professional Services Agreement for the Municipal Marketing Partnership Program. A copy of this Amendment, previously executed by Active, is attached to this Ordinance as Exhibit I.

SECTION 3. This Ordinance shall be effective immediately upon the passage of eight (8) affirmative votes. If it is not passed by (8) affirmative votes, this Ordinance shall be effective on and after the tenth day after passage.

PASSED AND APPROVED this 29th day of June, 2006.


M A Y O R

ATTEST:


City Clerk

PHIL HARDBERGER

APPROVED AS TO FORM:

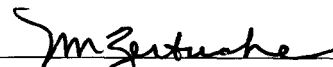

for City Attorney

Exhibit
I

**FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT FOR
MUNICIPAL MARKETING PARTNERSHIP PROGRAM**

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, this First Amendment to the Professional Services Agreement for Municipal Marketing Partnership Program ("First Amendment") is entered into by the CITY OF SAN ANTONIO, a Texas Municipal corporation ("City"), acting by and through its City Manager pursuant to and duly authorized by Ordinance No. _____, passed and approved on June 15, 2006, and Active Network, Inc., ("Consultant") acting by and through its duly authorized designated officer.

A. City and Public Enterprise Group, Inc. entered into the Professional Services Agreement for Municipal Marketing Partnership Program ("Agreement") pursuant to City of San Antonio Ordinance No. 100413, dated February 10, 2005, and said Agreement was assigned to Consultant by Ordinance No. 100839, dated May 12, 2005.

B. City and Consultant agree to amend specific provisions of the Agreement as set out in this First Amendment:

1. Section 4.2 is amended by deleting the second sentence of the Section.
2. Section 4.2.1 is deleted in its entirety.
3. Section 4.3.1 is amended to reflect that, in addition to the retainer payments set forth in the Agreement, Consultant shall be entitled to commission payments of ten percent (10%) of the total gross revenues generated by Eligible Partnership Agreements for the first three (3) years of any such Eligible Partnership Agreement. Such payments shall be made in the manner set forth in Section 4.3.1 of the Agreement. It is the understanding of the Parties hereto that the only Eligible Partnership Agreement that shall qualify for such commission payments in the City's License for Beverage Services.

Except as otherwise expressly modified hereby, all terms and provisions of the Agreement are ratified and confirmed and shall remain in full force and effect, enforceable in accordance with their terms.

EXECUTED AND SIGNED this 31 day of May, 2006.

CITY OF SAN ANTONIO

Sheryl Sculley
City Manager

ATTEST:

City Clerk

ACTIVE NETWORK, INC.

Mike Nienthuis
Name: Mike Nienthuis
Title: VP Corporate Development

APPROVED AS TO FORM:

City Attorney