

CITY OF SAN ANTONIO
ITEM NO. **33**

**CITY OF SAN ANTONIO
ALAMODOME DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Michael Abington, Alamodome Director

SUBJECT: Fourth Amendment and Extension to Licensed User Agreement with Ticketmaster, L.L.C.

DATE: January 5, 2006

SUMMARY AND RECOMMENDATIONS

An ordinance authorizing the City Manager or her designee to execute a fourth (4th) amendment and extension to the Licensed User Agreement with Ticketmaster, L.L.C. for the period January 1, 2006 through December 21, 2008. In addition this ordinance amends the terms and conditions of the agreement by adding an Inside Charge of \$0.10 per ticket for certain mutually-agreed non-customary Ticketmaster events. Ticketmaster, L.L.C. provides box office and ticket distribution services at the following City venues: Alamodome, Henry B. Gonzalez Convention Center, Lila Cockrell Theatre, and Municipal Auditorium.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

In May 1995 City Council approved a three-year agreement with Ticketmaster, with a three-year renewal option, after conducting a Request for Qualifications (RFQ) process. After presentations and interviews with the three respondents – Collier Enterprises, Dillard's and Ticketmaster – Ticketmaster was chosen based on having the:

- largest number of established local and statewide outlets;
- largest phone room network, and;
- ability to distribute tickets in Mexico.

The agreement was first amended in March 1999 and the term extended for five years through 2003, with a two-year renewal option through 2005. This two-year renewal option was exercised in December 2003 along with a second amendment that among other items provided for an additional three-year renewal option. Most recently a third amendment was approved by City Council in September 2005 which provided for the purchase, license and maintenance of AccessManager – Ticketmaster's proprietary ticket barcode scanning system.

Ticketmaster provides proprietary, specialized equipment and software, including AccessManager, to the Alamodome and its affiliated outlets to sell tickets for City venues as well as providing a phone center and internet site to purchase tickets online by credit card. As of February 2005 Ticketmaster provided 19 outlets throughout San Antonio, and 126 outlets throughout the state of Texas. Examples of local outlets include Foleys, HEB, Mail in the Mall, the Laurie Auditorium at Trinity University, and the Majestic Theatre.

POLICY ANALYSIS

Under the proposed amendment Ticketmaster proposes to charge the Alamodome an Inside Charge of \$0.10 per ticket for events that are not usually sold through the Ticketmaster system, such as high school football games and trade shows. Tickets for these type events are sold exclusively through the

Alamodome box office. This Inside Charge is assessed to the City, not the customer, and would offset the cost to Ticketmaster for the use of their system and ticket stock.

FISCAL IMPACT

The anticipated net revenue to the Community & Visitor Facilities Fund for the years 2006 through 2008 is \$213,133.

There is no General Fund impact.

COORDINATION

This item has been coordinated with the City Attorney's Office, Office of Management and Budget, Contract Services Department, and Convention Facilities Department.

SUPPLEMENTAL INFORMATION

A completed Discretionary Contracts Disclosure form is attached.

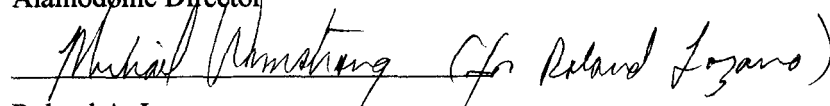
Under the terms of the Ticketmaster agreement Convenience Charges per ticket and Processing Fees per order, as applicable, are assessed to customers for tickets purchased via outlet, phone or internet. Per the agreement these fees are not assessed to customers purchasing tickets directly from the Alamodome box office for events at the Alamodome, Convention Center, Lila Cockrell Theater or Municipal Auditorium. The agreement also provides for a Royalty, or rebate, to the City for each fee collected by Ticketmaster. The agreement further stipulates annual or biennial increases to these fees and royalties. Attachment A summarizes the fees and royalties for 2005 as well as for the initial term of this amendment.

The following chart depicts the Ticketmaster cost for a family of four to purchase tickets to a Family Show at the Alamodome, such as the circus.

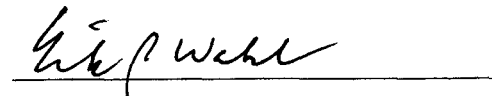
	2005			2006		
	Outlet	Telephone/ Internet	Dome Box Office	Outlet	Telephone/ Internet	Dome Box Office
\$25.00 Tickets	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00
Ticketmaster Fees						
Convenience Charge (per ticket)	\$5.25	\$5.25	\$0.00	\$5.50	\$5.50	\$0.00
Processing Fee (per order)	\$0.00	\$3.40	\$0.00	\$0.00	\$3.65	\$0.00
Total Ticketmaster Fees	\$21.00	\$24.40	\$0.00	\$22.00	\$25.65	\$0.00
Total Ticket Cost with Fees	\$121.00	\$124.40	\$100.00	\$122.00	\$125.65	\$100.00
Net Increased Cost to Customer	-	-	-	\$1.00	\$1.25	-



Michael Abington
Alamodome Director



Roland A. Lozano
Assistant to the City Manager



† Sheryl Sculley
City Manager

Fourth Amendment and Extension to Licensed User Agreement with Ticketmaster L.L.C.

Summary of Convenience Charges, Processing Fees and Royalties

	2005				2006				2007				2008			
	Convenience Charge (per ticket)		Processing Fee (per order)		Convenience Charge (per ticket)		Processing Fee (per order)		Convenience Charge (per ticket)		Processing Fee (per order)		Convenience Charge (per ticket)		Processing Fee (per order)	
	Amount	Royalty	Amount	Royalty	Amount	Royalty	Amount	Royalty	Amount	Royalty	Amount	Royalty	Amount	Royalty	Amount	Royalty
Concerts & Professional Sports																
Facility Box Office	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Outlet	\$6.50	\$1.10	\$0.00	\$0.00	\$6.50	\$1.10	\$0.00	\$0.00	\$6.75	\$1.15	\$0.00	\$0.00	\$7.00	\$1.20	\$0.00	\$0.00
Telephone/Internet	\$6.50	\$1.65	\$4.15	\$0.30	\$6.50	\$1.65	\$4.40	\$0.35	\$6.75	\$1.75	\$4.65	\$0.40	\$7.00	\$1.85	\$4.90	\$0.45
Family Show Attractions																
Tickets <= \$10.00																
Facility Box Office	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Outlet	\$3.75	\$0.25	\$0.00	\$0.00	\$4.00	\$0.30	\$0.00	\$0.00	\$4.00	\$0.30	\$0.00	\$0.00	\$4.25	\$0.35	\$0.00	\$0.00
Telephone/Internet	\$3.75	\$0.25	\$3.40	\$0.20	\$4.00	\$0.30	\$3.65	\$0.25	\$4.00	\$0.30	\$3.65	\$0.25	\$4.25	\$0.35	\$3.90	\$0.30
Tickets \$10.01-\$19.99																
Facility Box Office	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Outlet	\$4.25	\$0.30	\$0.00	\$0.00	\$4.50	\$0.35	\$0.00	\$0.00	\$4.50	\$0.35	\$0.00	\$0.00	\$4.75	\$0.40	\$0.00	\$0.00
Telephone/Internet	\$4.25	\$0.30	\$3.40	\$0.20	\$4.50	\$0.35	\$3.65	\$0.25	\$4.50	\$0.35	\$3.65	\$0.25	\$4.75	\$0.40	\$3.90	\$0.30
Tickets =>\$20.00																
Facility Box Office	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Outlet	\$5.25	\$0.85	\$0.00	\$0.00	\$5.50	\$0.90	\$0.00	\$0.00	\$5.50	\$0.90	\$0.00	\$0.00	\$5.75	\$0.95	\$0.00	\$0.00
Telephone/Internet	\$5.25	\$1.10	\$3.40	\$0.20	\$5.50	\$1.20	\$3.65	\$0.25	\$5.50	\$1.20	\$3.65	\$0.25	\$5.75	\$1.30	\$3.90	\$0.30
All Other Attractions																
Tickets <= \$10.00																
Facility Box Office	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Outlet	\$4.25	\$0.45	\$0.00	\$0.00	\$4.50	\$0.50	\$0.00	\$0.00	\$4.50	\$0.50	\$0.00	\$0.00	\$4.75	\$0.55	\$0.00	\$0.00
Telephone/Internet	\$4.25	\$0.95	\$3.65	\$0.25	\$4.50	\$1.05	\$3.90	\$0.30	\$4.50	\$1.05	\$3.90	\$0.30	\$4.75	\$1.15	\$4.15	\$0.35
Tickets \$10.01-\$19.99																
Facility Box Office	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Outlet	\$4.75	\$0.75	\$0.00	\$0.00	\$5.00	\$0.80	\$0.00	\$0.00	\$5.00	\$0.80	\$0.00	\$0.00	\$5.25	\$0.85	\$0.00	\$0.00
Telephone/Internet	\$4.75	\$1.05	\$3.65	\$0.25	\$5.00	\$1.15	\$3.90	\$0.30	\$5.00	\$1.15	\$3.90	\$0.30	\$5.25	\$1.25	\$4.15	\$0.35
Tickets =>\$20.00																
Facility Box Office	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Outlet	\$5.50	\$0.90	\$0.00	\$0.00	\$5.75	\$0.95	\$0.00	\$0.00	\$5.75	\$0.95	\$0.00	\$0.00	\$6.00	\$1.00	\$0.00	\$0.00
Telephone/Internet	\$5.50	\$1.20	\$3.65	\$0.25	\$5.75	\$1.35	\$3.90	\$0.30	\$5.75	\$1.35	\$3.90	\$0.30	\$6.00	\$1.45	\$4.15	\$0.35

City of San Antonio
Discretionary Contracts Disclosure

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.*

<p>(1) Identify any individual or business entity¹ that is a party to the discretionary contract:</p> <p>TICKETMASTER L.L.C.</p>
<p>(2) Identify any individual or business entity which is a partner, parent or subsidiary business entity, of any individual or business entity identified above in Box (1):</p> <p><input checked="" type="checkbox"/> No partner, parent or subsidiary; or</p> <p>List partner, parent or subsidiary of each party to the contract and identify the corresponding party:</p>
<p>(3) Identify any individual or business entity that would be a subcontractor on the discretionary contract.</p> <p><input checked="" type="checkbox"/> No subcontractor(s); or</p> <p>List subcontractors:</p>
<p>(4) Identify any lobbyist or public relations firm employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.</p> <p><input checked="" type="checkbox"/> No lobbyist or public relations firm employed; or</p> <p>List lobbyists or public relations firms:</p>

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions
 List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

(6) Disclosures in Proposals
 Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: 	Title: General Manager Ticketmaster San Antonio	Date: November 29, 2005
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² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

ticketmaster

FOURTH AMENDMENT AND EXTENSION TO LICENSED USER AGREEMENT

THIS FOURTH AMENDMENT AND EXTENSION TO LICENSED USER AGREEMENT ("Amendment") is entered into as of this 1st day of January, 2006, by and between Ticketmaster L.L.C., a Delaware limited liability company ("Ticketmaster"), and the City of San Antonio, a municipality of the State of Texas ("Principal"), with reference to the following facts:

A. Southwest Ticketing, Inc., predecessor-in-interest to Ticketmaster and Principal entered into that certain Licensed User Agreement dated as of June 1, 1995 as amended by those certain Amendments to Licensed User Agreement dated as of January 1, 1999, January 1, 2004 and October 1, 2005 (as amended, "Licensed User Agreement") whereby Principal authorized Ticketmaster to act as Principal's exclusive agent for the sale of all remote (e.g. on the Internet, at outlets and by telephone) Tickets to attend each of the Attractions upon the terms and conditions set forth in the Licensed User Agreement.

B. Ticketmaster and Principal desire to exercise the three (3)-year renewal option provided for by the Second Amendment and Extension to Licensed User Agreement and to amend the Licensed User Agreement in certain other respects as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties hereby agree, effective as of the date set forth above, as follows:

1. **Defined Term(s)**. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Licensed User Agreement.

(a) **New Definitions**. The following new definition is hereby added to the end of Section 1 of the Licensed User Agreement:

"(s) **Sale and Sell** means the terms 'sale,' and 'sell,' and any derivations thereof in this Agreement shall include any distribution for consideration, by any means or method (including without limitation, on the Internet or by auction) and shall include resale."

2. **Extension of Term**. The Parties hereby exercise the three (3)-year renewal option made available in the Second Amendment and Extension to Licensed User Agreement extending the Term through December 31, 2008.

3. **Inside Charges:** Section 4(a) of the Agreement is amended to provide that the following inside charge shall be assessed by Ticketmaster and received from gross ticket proceeds:

Type of Transaction	Inside Charge
Tickets for high school football games, trade shows or other events as mutually agreed that that are not customarily sold through Ticketmaster and that Principal requests that Ticketmaster place on the TM System for sales through the Facility Box Office	\$0.10 per Ticket on each Ticket processed through the TM System at the Facility Box Office

4. **Convenience Charge (Per Ticket):** Section 4(b) of the Agreement is amended to provide that the amount of the Convenience Charge for the following categories of Ticket sales shall initially be as follows.

Concert Attractions and Professional Sports Attractions

Face Value of Tickets	Outlets and Telephone Sales
All	\$6.50

5. **Principal's Royalties:** Section 4(e) of the Agreement is amended to provide that the amount of Convenience Charge Royalties for the following categories of Ticket sales are as set forth below:

Type of Royalty	Type of Sales	Amount of Royalty
Concert Attractions and Professional Sports Attractions Convenience Charge	Outlets	\$1.10
	Telephone Sales	\$1.65

6. **Purchaser Data.** The following shall be added to the end of Section 32(m) of the Licensed User Agreement:

"Principal agrees that if any portion of the Purchaser Data includes a person's name and that person's (i) social security number; or (ii) driver's license or government identification number; or (iii) password and account identification, then Principal agrees to implement and maintain reasonable security procedures and practices appropriate to the nature of the Purchaser Data to protect the Purchaser Data from unauthorized access, destruction, use, modification or disclosure. Principal also agrees that if any portion of the Purchaser Data includes credit or debit card numbers and related information, Principal shall comply with payment card industry standards."

7. **Client Listings.** The following shall be added to the Licensed User Agreement as Section 32(n):

"(n) **Client Listings:** Principal's execution of this Agreement indicates approval for Principal to be listed as a Ticketmaster client in monthly newsletters releases about Ticketmaster products and services for distribution to trade and consumer media. If at any time, you would like Ticketmaster to stop using your name for the purposes listed in this Section 32(n) above, just send an email to mediarequest@ticketmaster.com or contact Ticketmaster's Director of Corporation Communications, currently Bonnie Poindexter at bonnie.poindexter@ticketmaster.com."

8. **Conflicting Terms.** In the event a conflict arises between this Amendment and the terms and conditions of the Licensed User Agreement the terms and conditions of this Amendment shall control. Except as specifically set forth herein to the contrary, all of the terms and conditions of the Licensed User Agreement are in full force and effect, shall continue in full force and effect throughout the term and are hereby ratified and confirmed by the Parties.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth below.

TICKETMASTER L.L.C.,
a Delaware limited liability company;

By: *[Signature]*

Title: SR. VP - SOUTH CENTRAL

Date: 12-22-05

CITY OF SAN ANTONIO,
a municipality of the State of Texas

By: _____

Title: _____

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney