

# AGENDA REPORT

TO: DEANNA J. SANTANA  
CITY ADMINISTRATOR

FROM: Brooke A. Levin  
Interim Director, PWA

SUBJECT: Supplemental Report: Contract for Operation  
and Management of Parking Facilities

DATE: November 13, 2013

City Administrator  
Approval

*Deanna J. Santana*

Date

11-19-13

COUNCIL DISTRICT: City-Wide

## RECOMMENDATION

Staff recommends that the City Council approve a resolution directing the City Administrator (1) to negotiate a multi-year contract for the operation and management of eight (8) City-owned parking garages with Standard Parking Corporation and its partners under the name City of Oakland Parking Partners, the highest scoring respondent to a competitive request for proposal and (2) to return to the City Council upon conclusion of negotiations for final approval of said contract and other parking-related matters.

## REASON FOR SUPPLEMENTAL

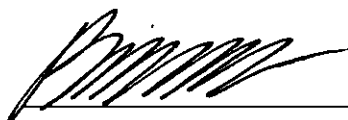
At the Public Works Committee (PWC) meeting of November 12, 2013, the Committee requested the following documents be submitted:

1. Request for Proposals for Operation and Management of Parking Facilities (*Attachment A*) (This document is also available on the City's official "iSupplier" website and on CIPLIST.com);
2. Letters of Protest:
  - a. Letter of Protest from Douglas Parking, LLC (*Attachment B*);
  - b. Letter of Protest from Impark Pacific Parking, LLC (*Attachment C*);
3. Responses to Letters of Protest:
  - a. Response to Letter of Protest from Douglas Parking, LLC (*Attachment D*);

Item: \_\_\_\_\_  
Public Works Committee  
December 3, 2013

- b. Response to Letter of Protest from Impark Pacific Parking, LLC  
(*Attachment E*);
4. RFP Scoring Rubric with Selection Panel Results (*Attachment F*).

Respectfully submitted,



BROOKE A. LEVIN  
Interim Director, Public Work Agency

Reviewed by:  
Michael Neary, P.E., Assistant Director  
Department of Engineering and Construction

Reviewed by:  
Wladimir Wlassowsky, P. E.  
Transportation Services Division Manager

Prepared by:  
Michael Ford, Parking Garage Management  
Transportation Services Division

**Attachments:**

- Attachment A – Request for Proposals for Operation and Management of Parking Facilities  
Attachment B – Letter of Protest from Douglas Parking, LLC  
Attachment C – Letter of Protest from Impark Pacific Parking, LLC  
Attachment D – Response to Letter of Protest from Douglas Parking, LLC  
Attachment E – Response to Letter of Protest from Impark Pacific Parking, LLC  
Attachment F – Scoring Rubric with Selection Panel Results

**Attachment A**

Request for Proposals for Operation and Management of Parking Facilities



**City of Oakland**

Deanna J. Santana, City Administrator

**Request for Proposals**

for

**OPERATION AND MANAGEMENT OF  
PARKING FACILITIES**

**Public Works Agency**  
Department of Engineering and Construction  
Transportation Services Division  
250 Frank H. Ogawa Plaza, Suite 4314  
Oakland, CA 94612  
Project Manager: Michael Ford  
Tel: (510) 238-7670

**June 2013**

**DISCLAIMER:** This RFP is a solicitation for proposals; it is not an offer of a contract. Proposals and other responses to this RFP are offers, which are not binding until unconditionally accepted by the City, and said proposal and acceptance are reduced to and memorialized in a fully and properly executed written instrument, substantially similar in form and content to the attached Sample Professional Services Agreement.

The City reserves the right to accept other than the lowest priced offers and to reject any proposals that are not deemed responsive and/or responsible. The City reserves the right to refuse and reject any and all proposals.

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6. Certification Regarding Debarment, Suspension and Other Responsibility Matters
7. Schedule E: Project Consultant Team Listing
8. Schedule O: Campaign Contribution Limits

**APPENDIX B: SAMPLE PROFESSIONAL SERVICES AGREEMENT AND EXHIBITS**

Exhibit A. Scope of Management Services (23 pages)

Exhibit B. Maintenance Standards (2 pages)

Exhibit C. Maintenance Schedule (3 pages)

Exhibit D. Parking Facility Operation and Management Regulations (19 pages)

**APPENDIX C: SCHEDULE Q – PROFESSIONAL SERVICES INSURANCE REQUIREMENTS**

**APPENDIX D: STRUCTURAL AND OPERATING CHARACTERISTICS OF PARKING FACILITIES**

## I. PROJECT INFORMATION

### A. REQUEST FOR PROPOSALS NOTICE

#### **Operation and Management of Parking Facilities**

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##### **Services Required**

The City of Oakland is soliciting proposals for a Contractor to provide the Operation and Management of Parking Facilities in the City. The selected Contractor would oversee the parking management services necessary to manage, operate, maintain and improve nine City-owned parking facilities.

##### **Local/Small Local Business Enterprise Requirement**

The City's 50% Local/Small Local Business Enterprise (L/SLBE) program requires that there be at least three certified businesses listed in the industry, trade or profession that constitutes a major category of work. If at least three L/SLBEs are not certified, then the requirement is either waived, or the 50% requirement may be set from 50% to 0%. Based on the above, it has been determined that the L/SLBE 50% requirement remains intact. However, any firm that does not meet this requirement would **NOT** be automatically disqualified as this is a negotiated qualifications based environment.

##### **Contract Term**

Five (5) years; which may be extended for an additional two-and-a-half (2 ½) years if the City elects to do so; and/or extended on a month-to-month basis, not to exceed eighteen (18) months as proposed in the RFP.

##### **Pre-proposal Meeting (Mandatory for Primes)**

10:30 AM, June 25, 2013, Broadway Conference Room, 4<sup>th</sup> Floor, 250 Frank Ogawa Plaza, Oakland, CA 94612. Primes are required to attend the Pre-Proposal Meeting, at which time City staff will explain the RFP's restrictions concerning communications prior to contract award and Primes must complete the Attestation of Compliance and Certification Regarding Lobbying to acknowledge receipt and their understanding of these restrictions. The RFP will not be released to the public until after the pre-proposal meeting. Other topics to be discussed at this meeting include the Contractor Qualification Questionnaire, compliance with applicable programs and mandatory registration in "iSupplier". For iSupplier registration, go to:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/index.htm>



## **Deadline for Contractor Qualification Questionnaire**

2:00 PM, July 11, 2013. Must be delivered in person to the Reception Desk for the Public Works Agency, 250 Frank Ogawa Plaza, Suite 4314, Oakland, CA 94612.

## **Deadline for Questions**

5:00 PM, July 11, 2013 by email to the Project Manager. It is the Contractor's responsibility to ensure that the email has been received by the Project Manager.

## **Proposals Due**

2:00 PM, August 6, 2013. Proposals not received by the Reception Desk for the Public Works Agency, 250 Frank Ogawa Plaza, Suite 4314, Oakland, CA 94612 by the deadline will be returned unopened.

## **Proposal Security Bond**

\$10,000 certified or cashier's check or bid bond.

## **Contact Information**

The following City staff members are available to answer questions regarding this RFP:

Project Manager: Michael Ford at [mford@oaklandnet.com](mailto:mford@oaklandnet.com) or (510) 238-7670

PWA Contract Services: Calvin Hao at [chao@oaklandnet.com](mailto:chao@oaklandnet.com) or (510) 238-7395

Contract Compliance Officer: Vivian Inman at [vinman@oaklandnet.com](mailto:vinman@oaklandnet.com) or (510) 238-6261

## **Proposal Documents**

Proposal documents and Addenda in digital format are provided free of charge through both sites listed below. Hard copies will NOT be available for purchase from the City. Separate Plan Holder lists are maintained by the City's official "iSupplier" site and CIPList.com. The Summary of Proposals Received is posted only to CIPList.com.

1. iSupplier (the City's official site):  
<http://www2.oaklandnet.com/Government/o/CP/s/ContractingPurchasingOpportunities/index.htm>
2. CIPList.com (an alternate third-party site):  
<http://ciplist.com/plans/?Oakland/city/9392>

## **Important Disclaimers and AB 2036 Compliance**

It is the responsibility of each prospective bidder to download and print all bid documents, including any addenda, and to verify the completeness of their printed bid documents before submitting a bid. The City does not warrant, represent, or guarantee the accuracy or completeness of any bid documents and/or information retrieved from other sources. The City is not responsible for any loss or damage including, but not limited to, time, money, or goodwill arising from errors, inaccuracies or omissions in any bid documents and/or information obtained from other sources. It is each prospective bidder's responsibility to check these sites through to the close of bids for any applicable addenda or updates.

### **B. INTRODUCTION**

The City of Oakland [City] oversees the management and operations of 17 parking facilities generating approximately Nine Million Dollars (\$9M) in gross annual revenue. Through the effective management of approximately 5,150 off-street parking spaces in garages and lots, the City pursues its mission to provide clean, safe and convenient parking to the visitors, employees and businesses while supporting the economic vitality of the City's downtown and neighborhood commercial districts. The City monitors current and anticipated parking demands and evaluates need for the expansion and development of new parking facilities. This is accomplished by balancing parking affordability with the fiscal responsibility to operate, maintain, improve and replace facilities in a sustainable and self-sufficient manner.

Therefore, it is very important to the City that its parking facilities are managed and operated in a manner that reflects the City's commitment to excellent customer service, careful stewardship of the public's capital investments, adequate safeguards on the City's revenues, and professional management of the City's services.

To this end, the City intends to enter into an agreement with a qualified Contractor to provide parking operations and facilities management services for the 9 City-owned parking facilities listed below:

1. City Center Garage West, 1250 Martin Luther King Jr. Way - 1,461 spaces
2. Clay Street Garage, 1414 Clay Street - 335 spaces
3. Dalziel Garage, 250 Frank Ogawa Plaza - 213 spaces
4. Franklin 88 Garage, 9<sup>th</sup> & Franklin Street - 224 spaces
5. Franklin Plaza Garage, 1719 Franklin Street - 482 spaces
6. Harrison Street Garage, 1200 Harrison Street - 200 spaces
7. Telegraph Plaza Garage, 2102 Telegraph Avenue - 351 spaces
8. UCOP Garage, 409 12th Street - 145 spaces
9. W. M. Courthouse Lot, 525 6th Street - 223 spaces

The required services shall vary based upon the specific structural and operating characteristics of each parking facility (see Appendix D: Structural and Operating Characteristics of Parking Facilities for more information).

### C. SCOPE OF SERVICES

The successful Contractor shall provide all services necessary to operate, manage, maintain and improve the nine City-owned parking facilities listed above on a twenty-four/seven (24/7) basis or as directed by the City, so as to maximize revenues and minimize costs, while providing the highest level of professional, courteous, and efficient services based on proven and effective operation and management practices in the parking industry. The Exhibits to the Sample Agreement (see Appendix B) contain a detailed description of the responsibilities of the Contractor and other applicable terms and conditions. Most of the current parking facilities' management agreements are based upon a fixed management fee with reimbursable expenses solely related to the actual operations of the facilities. The compensation structure for this agreement is explained in detail below (see Section I.D).

It is the City's desire that the selected Contractor offer employment to those current operating employees of the parking facilities who meet the high standards and required qualifications of the selected Contractor. The City expects its Contractor to make reasonable accommodation to retain current employees, but understands that not all of these employees may meet the expected employment standards of the Contractor.

#### Adding Parking Facilities

The City shall maintain the right during the entire Term of the Agreement resulting from this RFP to add parking facilities to the management agreement of the Contractor at any time. Any such additional parking facility shall be managed in the manner described in this RFP and the Management Agreement. In the event that the City desires to add parking facilities, the City shall provide, but is not obligated to, a 30 day written notice of intent to the Contractor. The Contractor's Management Fee will be adjusted generally by increasing the Management Fee by the percentage equal to the total number of parking spaces being added divided by the total number of parking spaces already being managed under the Agreement, but also taking into account other factors, such as comparability of the added facilities to those already managed, etc. In the event that the Contractor elects not to manage the additional facilities, the City may select another Contractor to manage the facilities.

#### Deleting Parking Facilities

The City shall have the right during the Term of the Agreement resulting from this RFP to either temporarily or permanently remove parking facilities from the Contractor's inventory for non-performance or removal of facilities from service, e.g., for renovation, garage automation or due to a major operational change. In the event the City decides to remove a facility from the Contractor's inventory, the Management Fee will be adjusted generally by

decreasing the Management Fee by the percentage equal to the total number of parking spaces being removed divided by the total number of parking spaces already being managed under the Agreement, but also taking into account other factors, such as comparability of the deleted facilities to those already managed, etc. In the event that the facility is returned to service during the term of the Agreement, the Management Fee shall be reinstated.

#### **Parking Rate Information**

The City has the sole authority to set and to change parking rates for the parking facilities. Upon approval of any new parking rates, the Contractor will be responsible for changing all rate signage based on the City's standards for signage, ensuring that timely software updates have been made and charging each patron the appropriate parking fees. Replacement signage costs pre-approved by the City will be reimbursable expenses. The City expects the Contractor to conduct semi-annual market parking rate surveys within a three block radius of each City garage under the Contractor's agreement and make recommendations to the City on proposed rate adjustments. The Contractor will summarize the rate surveys to provide an inventory of the various supplies in each area and the rate structures that apply to them. The Contractor also will be expected to develop recommended rate adjustments based on these findings. The Proposer is encouraged to describe a recommended methodology for collecting this information and preparing recommendations.

#### **Term of Agreement**

The term of the Agreement will be five (5) years, having an anticipated commencement date of January 1, 2014. At the end of the Agreement the City, at its sole discretion, may extend the Agreement for a period of 2 ½ years and or on a month-to-month basis not to exceed eighteen (18) total months respectively. If the selected Contractor is awarded a management contract for one or more facilities currently managed by the Contractor, the existing agreement with that Contractor for those facilities will terminate, and the terms and conditions of the new contract will apply from the Commencement Date of the new Agreement. Contractors should carefully review all of the terms of the Agreement before preparing their proposals.

The City has the right to terminate an agreement with or without cause by serving a thirty (30) day written Notice of Termination to the Contractor. The Contractor upon receipt of such Notice of Termination from the City shall end its operations and management of the City garages at the end of the thirtieth (30) day and turn over the operations and management of these garages to the City or its representative. During the thirty (30) day period following receipt of Notice of Termination the Contractor shall fully operate and manage these garages in accordance with the Terms of the Agreement.

#### **D. COMPENSATION**

The successful Contractor's compensation shall consist of the following items:

## 1. MANAGEMENT FEE

The Management Fee is intended to cover the Proposer's profit and un-reimbursed costs for management of the facilities that the Proposer seeks to manage. A Management Fee not to exceed \$8,540 per month (reflecting a per parking space management fee of \$2.35) is established for all nine parking facilities (not each facility).

Beginning the first month of contract year three (3), the monthly management fee will be increased by the CPI index and again beginning the first month of contract year six assuming the City decides to exercise the 2 ½ year contract extension. There will not be any fee increases for any month-to-month contract extensions.

## 2. REIMBURSABLE EXPENSES

Each month, the City shall reimburse the Contractor for operating expenses set forth in the Annual Operating Budget approved by the City. These pre-approved expenses shall be reimbursable only to the extent that the Contractor submits sufficient documentation to the City, indicating that the expenses were pre-approved and directly incurred in providing the required operation and management services to the parking facilities. The Contractor is required to invoice the City, including supporting documentation of expenses and delivered to a designated representative of the City's Revenue and Finance Department, by the 15<sup>th</sup> of the month for reimbursement of the previous month's expenses and any fees due. The Contractor shall not be reimbursed for any otherwise reimbursable operating expense, incurred during a particular month that exceeds the Approved Budget without seeking prior written approval from the City.

Reimbursable Operating Expenses generally include the following categories of Contractor's approved costs that are directly associated with a Contractor's performance of its obligations under the Agreement:

1. Operation and Management of Parking Facilities Personnel/Payroll
  - a. Personnel salaries/wages
  - b. Payroll taxes
2. Utilities
  - a. Electricity
  - b. Water
  - c. Telephone (business use only)
  - d. Solid waste and recycling pick up (in accordance with applicable laws)
3. Supplies

- a. On-site facility office (as applicable per garage)
- b. Restrooms (as applicable per garage)
- c. Operations supplies (e.g. tickets/chip coins, cones, receipt paper, etc. as applicable per garage)
- d. Repair/maintenance (e.g. gate arms, light bulbs, etc. as applicable per garage)

4. Professional Services

- a. Annual Audit (City will select an auditor with audit report submitted directly to the City)
- b. Security
- c. Janitorial
- d. Elevator Maintenance (as applicable)
- e. Bank Charges (other than penalties or late fees)
- f. Armored Courier
- g. Uniform Cleaning
- h. Personnel Training
- i. Landscape Maintenance (indoor and outdoor as applicable by garage)
- j. Other services (as directed with prior written approval from the City's Designee)

5. Other

- a. Contract specific Insurance premiums with prior approval from the City's Designee (except for deductibles or other costs resulting from theft, employee negligence, dishonesty or other acts of malfeasance)
- b. Marketing of Garages (with City approval)
- c. Parking tax (as applicable)

Non-Reimbursable Expenses shall include, but are not limited to:

- 1. Employee recruitment

2. Internal accounting services; payroll administration/processing, invoicing monthly statements
3. In-house audit
4. Interoffice correspondence
5. Off-site supervision
6. The cost of Emergency Actions caused by the negligence or willful misconduct of any employee of the Contractor
7. The cost of repairing parking access and revenue control equipment or other damage to the Garages resulting from Contractor's or Contractor's employees' willful, intentional or negligent acts
8. Purchase, maintenance and fueling of vehicles required for the operation and management of the parking facilities
9. Meals, mileage, gratuities or gifts
10. Penalties or fees resulting from Contractor's late payments of fees, taxes or bills
11. Overhead costs not directly attributable to operation of the Garages
12. Attorney's Fees or costs incurred in connection with any dispute with the City
13. Other expenses not directly related to the day-to-day operations, as may be determined by the City's Designee in his or her sole discretion

### 3. INCENTIVE FEE

In addition to the monthly management fee, the selected Contractor may earn an incentive fee as a result of exceeding established net parking income targets and/or exceeding established customer service standards as described below. Increase in the incentive fee will be negotiated between the City and the Contractor after contract award by the Council. The fee will take into account: (1) increase in Net Income, and (2) Customer Satisfaction.

#### 1. Increase in *Net Income*

The City recognizes the efforts required to operate and manage the parking facilities in the most effective manner to achieve increased revenues and reduce expenses. An incentive fee will be offered to reward the Contractor's success in achieving certain net revenue targets while maintaining the most effective methods of operation and customer satisfaction. Costs shall not exceed previous year's actual expenses, unless pre-approved in writing by the City.

For the purpose of the Incentive Fee, Net Income is defined as Gross Revenues less any parking taxes, key card deposits, and total reimbursable operating expenses including any applicable management fee. The total Operating Expense does not include Capital Expenditures or Incentive Fee payments. The selected Contractor may earn an incentive fee based on the income exceeding the net income targets set by the City.

For each contract year, the target is based on Actual Net Income from the previous contract year. In the event that a target is not met for a contract year, the established Target Net Income will carry over for the next contract year without adjustments. For example, if actual net income for year 2 is \$100,000 short of a target of \$3 million, no incentive fee will be earned in year 2. Furthermore, the Target Net Income for Contract Year 3 will not be adjusted downward, but will remain the same as in Contract Year 2 (which is \$3 million in this example).

In order to be eligible to earn the incentive fee for increasing net income, the Contractor must have assumed management of a facility for a minimum of one contract year. The Contractor will earn an incentive fee only if the net income for all parking facilities (not individual facilities) exceeds the net income targets established. These targets may be subject to revision, in the City's absolute and sole discretion, to account for future parking rate changes and other impacts.

## 2. Customer *Satisfaction*

At the City's direction, the Contractor shall conduct a semi-annual survey of patrons for each parking facility as part of its outreach strategy; separate surveys shall be developed and distributed to transient and monthly patrons. The surveys will include performance measures in several categories, including but not limited to customer satisfaction, cleanliness, and safety/security of facility. Rating will be on a point scale with 4 = Outstanding; 3= Good; 2 = Acceptable; 1 = Improvement Needed; and 0 = Unacceptable. City reserves the right to verify the responses and results of the survey as one factor among others in its evaluation of the Contractor's eligibility for this Incentive Fee.

The Contractor will schedule and complete an initial customer satisfaction survey within the first two months of operation to establish a baseline performance measure for each category. The Contractor will then schedule a semi-annual survey after assuming management for a minimum of six (6) months.

**ALL** of the following three (3) conditions must be met for each and every facility in order to earn the Customer *Satisfaction* incentive fee:

1. The minimum of survey responses will be based on one percent (1%) of the total volume of customers (transient and monthly) for the six (6) month period in each facility, but not less than 90 responses per facility;



2. A combined average score of 3 or .5 above the baseline, whichever is lower, for all categories must be achieved;
3. A minimum average score of 2.5 or .5 above the baseline, whichever is lower, must be achieved in each category.

#### **E. MINIMUM QUALIFICATIONS AND EXPERIENCE**

To be considered for the contract, a corporation or other legal entity or its managing members, including any Joint Venture Partner or Subcontractor who will provide parking management services (a "Contractor"), must meet or exceed each of the following minimum qualifications (the "Minimum Qualifications"). A Proposal from a Contractor that does not meet the Minimum Qualifications will not be considered.

##### **Relevant Experience**

1. The Contractor must currently be operating and managing at least three (3) multi-level parking facilities, with a minimum of 300 spaces each at two locations, plus one multi-level structure with at least 1000 spaces, and which has been under the Contractor's management for a continuous period of three year prior to the date of this RFP; and
2. During said three-year period, the Contractor must have had:
  - a. experience in managing municipal-owned garages within the greater Bay Area; and
  - b. experience in the use of automated pay station, automated parking access, and revenue control equipment and software, including such functions as sophisticated spreadsheet and information retrieval and report writing, etc.; and
  - c. experience with additional software including, but not limited to, Microsoft's Excel and PowerPoint, and other financial reporting software; experience in managing at least six full-time operation employees at each parking facility that was staffed and open to the public at a minimum of twelve (12) hours per day, preferably on a twenty-four (24) hour basis; and
  - d. experience developing and managing capital improvement projects for parking facilities.

##### **Financial Requirements**

The Contractor must have a minimum of three years of continuous, first-hand experience in the operation and management of parking facilities with:

- e. Annual Net Revenues (Gross revenue minus parking tax, if any) of at least \$4,000,000 from all facilities under its management;

f) and Annual Operating Budget of at least \$2,000,000.

The pre-proposal questionnaire required by this RFP (see Appendix A Form 1 Contractor Qualification Questionnaire) will be used to determine if the Contractor has met the relevant experience and financial requirements set forth above.

## II. SUBMITTAL REQUIREMENTS

*NOTE: Where the word "shall" or "must" or "required" appears, Contractors may not take an exception.*

### A. PRE-PROPOSAL CONFERENCE (MANDATORY FOR PRIMES)

A mandatory (for Primes) pre-proposal conference has been scheduled for:

June 25, 2013 at 10:30 a.m.  
250 Frank H. Ogawa Plaza  
Broadway Conference Room, 4<sup>th</sup> Floor  
Oakland, CA 94612

Questions related to this RFP may be addressed at this conference and any available new information may be provided at that time. Representatives from the City's Contract Compliance Office will be available to answer questions regarding the City's Local/Small Local Business Enterprise (L/SLBE) Ordinance.

Primes are required to attend the Pre-Proposal Meeting, at which time City staff will explain the RFP's restrictions concerning communications prior to contract award. At this time, Primes must complete the Attestation of Compliance and Certification Regarding Lobbying (Forms 5 and 6 of Appendix A) to document their receipt and understanding of these restrictions.

Any requests for information concerning this RFP submitted before or after the pre-proposal conference must be in writing, and any substantive replies will be issued as written addenda to all Contractors who attended the mandatory pre-proposal conference. Questions raised at the mandatory pre-proposal conference may be answered orally. If any substantive, new information is provided in response to questions raised at the mandatory pre-proposal conference, it will also be memorialized in a written addendum to this RFP and will be distributed to all Contractors who attended the mandatory pre-proposal conference.

## **B. CONTRACTOR QUALIFICATION QUESTIONNAIRE**

Each Contractor must hand-deliver completed Contractor Qualification Questionnaire (Appendix A.1). The intent of the questionnaire is to evaluate whether the Contractor meets all of the minimum qualifications set forth in the RFP. Upon receipt of the questionnaire, the City may require confirmation from financial institutions and the Oakland Tax Collector. Such information will be used to determine whether Contractors are eligible for further consideration. If additional information is required, Contractors will be expected to assist in securing the information on a timely basis.

The questionnaire must be accompanied by a statement from a financial institution verifying the Contractor's ability to provide or obtain Seven Hundred and Fifty Thousand Dollars (\$750,000) either in the form of an irrevocable letter of credit, a line of credit or a qualified loan commitment. This financial requirement assures the City that the Contractor, if selected, will have sufficient funds to pay operating costs, prior to requests for reimbursement, and is otherwise credit-worthy.

The Contractor must also provide audited financial statements for the previous three (3) years, prepared by a certified public accountant in accordance to generally accepted auditing standards, beginning with the most recent year, or three (3) years of notarized Federal Tax Statements. These documents may be marked as Proprietary or Confidential. Contractors should be aware, however, that under the City's Sunshine Ordinance, financial materials submitted by a successful Contractor may be subject to disclosure in response to a public records request. Should the City receive such a request, the Agency will notify the successful Contractor upon receipt of the request.

The Contractor Qualification Questionnaire and other required documents set forth herein must be received by 2:00 p.m., July 11, 2013, delivered in person to the Reception Desk of the Public Works Agency, 250 Frank H. Ogawa Plaza, Suite 4314, Oakland, California 94612

## **C. CONTENT AND FORMAT OF PROPOSALS**

A Contractor, in response to this RFP, must submit the following documents and/or information in the order and format specified below:

### **Letter of Introduction and Executive Summary**

*2 page maximum (required, but not scored)*

Proposals must include a Letter of Introduction describing the Contractor, how long it has been in business, its ownership structure including the name(s) of owner(s), relevant experience and its ability to provide the services in the RFP. The summary must be signed by and contain the name, address and phone number of the persons authorized by the Contractor to obligate the Contractor to perform the commitments contained in the proposal, and to communicate with the City in connection with this RFP. Submission of the letter will

constitute a representation by the Contractor that the Contractor is willing, able and authorized to perform the commitments contained in its proposal.

### **Qualifications and Experience**

*15 pages maximum (Up to 35 Points)*

1. The description of the Contractor's qualifications and experience must include the Contractor's experience in the off-street parking industry and operation of parking facilities comparable to the City-owned facilities (see Appendix D Table of Structural and Operating Characteristics of Parking Facilities), within the past three years, including any public agency contracts and use of central pay-on-foot equipment. The description should include staffing requirements, annual gross revenues, annual budget, successful marketing, revenue generation and/or customer service programs that the Contractor implemented, new business that the Contractor attracted to the parking facilities it manages, and a summary of the scope of responsibilities. This section should also refer to any objective evidence of the quality of the Contractor's performance with respect to the facilities, such as payment of incentive fees, exercise of renewal options, etc. The Contractor will be scored on experience in the parking operation and management field, and specifically in operations with similar financing, ownership and operational requirements.
2. A Contractor must describe its experience with the use of automated pay station, automated parking access, and revenue control equipment and software (specifying the manufacturer and model of systems used), as well as any use of spreadsheet, revenue and data reporting, and information retrieval and organization software including, but not limited to, Microsoft's Excel and PowerPoint, and other financial reporting software, and any experience with internet reservations, cell phone reservations, parking guidance systems, variable pricing options for including Special Event Pricing, Peak Demand Pricing and Market Based Pricing to maintain target occupancy levels.
3. This section should also include the qualifications of each management staff person outside the direct parking facilities staff, including any subcontractors. Brief resumes must be included for each Operations Manager that includes their years of experience with automated revenue control equipment, and the number of years experience in the operations of the parking facilities, including years of experience, if any, with Oakland facilities. Contractors should include a description of how each Operations Manager can enhance services or revenues at the parking facilities and how each Operations Manager will support and complement the current parking facilities staff.

4. The Contractor must be able to provide verifiable references, preferably other public agencies, that include current contact information, such as name, address, phone number, email, etc., including the nature of the relationship to the Contractor.
5. The Contractor must provide details of any notice of default or breach of contract, pursuant to any parking facilities management agreement received by the Contractor, its joint venture partner or subcontractor, even if such a default was cured at a later date. Contractor must also specify whether Contractor or any predecessor in interest has had any contract for the operation and management of parking facilities terminated due to breach or default.
6. The Contractor must specify whether the Contractor (or any predecessor in interest) has been involved in any claims or litigation, within the last five years, involving any contract for the operation and management of parking facilities. Describe the nature of the litigation, the parties involved, and how the matter was resolved.
7. Specify years of experience Contractor has had as a Contractor in providing other services such as daily valet parking services and providing bus service from a parking facility to event venues.

#### **Overall Organization and Clarity of Proposal**

*Up to 10 points*

Responsive proposals will be evaluated on the Contractor's understanding of the scope of work and tasks to be performed, as well as the completeness of the proposal, and the creativity of ideas included in the proposal.

#### **Management Approach/Operational Plan**

*Total 30 pages maximum (up to 45 points)*

1. **Staffing & Operational Plan – 10 page maximum**

The Contractor shall provide a description of how they will effectively manage and operate the subject parking facilities to ensure maximum revenue generation and a quality parking experience for all patrons. Contractor shall present evidence of competency and capability to perform the management services required and have the necessary experience, organization and financial ability to fulfill the conditions of the Agreement.

The Contractor shall describe all aspects of supervision and training proposed for personnel of the subject parking facilities, detailing the level and quality of parking services proposed. Relevant to management capabilities, Contractor shall provide detailed descriptions of the following:

- Key staff with organization chart indicating roles and relationships;
- Field supervision and staff accountability;
- Home office support and relationship between local and home office management;
- Staffing schedule for management and non-supervisory staff responsible for operation of parking facilities;
- Revenue and audit control, collection and deposit procedures;
- Records management;
- Customer service and complaint abatement procedures;
- Operating policies, procedures and forms;
- Security and emergency procedures;
- Personnel training and development; and
- Proposed plan to provide high level of customer service.

The proposal may include a proposed valet-assisted (stack parking) operation at the parking facilities and an explanation of how that operation will best serve transient and monthly users. The Contractor must submit a sample of its Standard Operating Practices (SOP), including a Table of Contents that describes hiring, training policies and procedures, and handling emergency situations (e.g. robbery, theft, vandalism, accidents, assaults, natural disasters, etc.).

2. Maintenance Plan – 5 page maximum

The Contractor must provide a general Maintenance Plan that describes how the Contractor will monitor, inspect, maintain and clean the parking facilities, paying careful attention to Exhibits B and C, Maintenance Standards and Maintenance Schedule respectively, of the Agreement and any additional requirements as provided by the City, pursuant to the Agreement. Maintenance equipment recommendations and requirements should also be provided. In addition to its other maintenance duties, the Contractor will be responsible for scheduling special cleaning when necessary and for overseeing and giving appropriate instruction to any janitorial service companies. Plans to minimize maintenance and major capital expenses, while balancing customer service and facility improvements, should also be included in the proposal.

The Contractor's Maintenance Plan will be evaluated based upon its overall strength, coherence, and probable success in maintaining first-class, clean, well-maintained and fully operational parking facilities at the lowest possible cost. The Maintenance Plan should also demonstrate knowledge of and ability to remove oil and grease spots on an on-going basis in conformance with the City's maintenance expectations, as set forth in the Agreement. Finally, the Maintenance Plan will be evaluated based upon how well it satisfies the needs of the parking facilities.

*NOTE: Janitorial services at some parking facilities are currently contracted out to a professional janitorial vendor. This should not be considered as the only method of maintenance means available.*

*Alternative and unique solutions are welcome, provided that they are thoroughly explained and their implementation meets the needs set forth by the City.*

3. Security and Safety Plan – 5 page maximum

The proposal must include a general Security and Safety Plan for maintaining both the security and safety of the customers, employees, vehicles, the parking facility, equipment, and the assets, including the integrity of cash handling and ticket auditing procedures. The proposal must address equipment (other than Revenue Control Equipment) and other technical recommendations or requirements, staffing and scheduling needs, emergency and crisis handling procedures, surveillance methods and surveillance equipment, as well as a disaster planning procedure that includes a reporting protocol and communications plan. A Contractor must describe in its Safety and Security Plan how management and supervisory staff will monitor and inspect the parking facilities to assure the security and safety of parking facility property and revenues and customer and employee safety. The proposal should describe how security can be improved, with an emphasis on customer safety, employee safety and vehicle break-ins. The proposal must include contingency plans and staff for security matters, including civil disobedience, riots, and response to the effects of acts of terrorism. The Contractor must submit a recommended Emergency Plan and a Disaster Recovery Plan and should also describe the specific training the proposed security company gives its employees regarding response to civil disobedience, armed robberies, riots, and the effects of acts of terrorism.

The Security Plan will be evaluated in terms of the safety of customers, employees, vehicles, facility equipment and the integrity of cash handling procedures. Scoring will include considerations of the Contractor's ingenuity and originality in developing methods that will increase overall security and safety, at the lowest possible cost without compromising best practices. The Security and Safety Plan should also demonstrate an acute understanding of the needs of customers and the parking facilities, as well as flexibility in responding to new and unexpected situations, if and when they arise.

4. Capital Improvements Plan – 5 pages maximum

The Contractor must provide a general Capital Improvements Plan that describes how the Contractor would take an active role in identifying, researching and proposing cost effective projects designed to enhance the functionality and desirability of the parking facilities. At the very least, the plan should include an initial concept for a long-term energy efficient fixtures strategy. Beyond this, plans should detail how the Contractor would use industry standards (such as the *Illuminating Engineers Society RP20*

*Lighting for Parking Facilities*) as the basis for auditing parking facilities and providing specific recommendations including pricing.

The Capital Improvements Plan will be evaluated in terms of modernizing and or supplementing existing systems including but not limited to lighting retrofits, solar power arrays, fan control systems, and electric vehicle powering stations. Scoring will include considerations of the Contractor's ingenuity and understanding in proposing projects that have the potential to increase revenue, reduce expenses, and improve customer satisfaction in cost effective and environmentally responsible and sustainable ways that are consistent with the City's Energy and Climate Action Plan adopted in December, 2012.

5. Operations Transition/Start-up Plan - 5 pages maximum

The Contractor shall include a plan for the commencement of management services for the subject parking facilities. The plan should identify key administrative personnel and operational activities necessary to begin operation including but not limited to start-up costs, equipment and supply purchases, employee recruitment, pre-employment screening and background checks, and employee training. A transition plan and proposed start-up budget shall be submitted with each proposal.

**Budget**

*Total of 6 pages maximum (up to 40 points - failure to include will result in rejection of proposal)*

1. Management Fee - 1 page allowed

The Contractor shall receive a fixed monthly management fee that covers Contractor's profit as well as overhead and other unreimbursed expenses. The management fee is not to exceed \$2.35 per space per month.

2. Reimbursable Costs - 5 page maximum

The proposal must also provide a pro-forma annual budget for the parking facilities that include all projected costs and expenses. Include a statement describing how the Contractor would reduce expenses and manage without a negative impact on customer service and facility condition.

The Contractor must describe two cost cutting programs that it implemented at other parking facilities that did not negatively impact services and facility condition, and the Contractor must describe the resulting cost savings.



The Contractor must also describe two of the largest capital improvement projects managed and completed at other parking facilities, the timeline, the budget and the process used to complete the project.

The City will evaluate Contractors based on the pro-forma operating and capital budgets and cost containment measures included in the proposal. The City desires to keep costs to a minimum, but merely speculative statements of lower costs will be disregarded if the basis for the lower cost is not clearly indicated and justified. The proposal should evidence an understanding of potential costs and revenues of the parking facilities and the impact on services and facility conditions. Emphasis will be placed on the Contractor's suggested means of cutting costs and completing capital projects, and past successful examples of cost-cutting programs and methods.

*NOTE: Budgets submitted in response to the above question are intended to demonstrate the Contractor's knowledge and ability to present and formulate a working operational budget for the facilities, and, if the Contractor is selected, can be used as the basis for negotiations but will not necessarily be accepted by the City as the actual budget. After the award of contract, the Contractor will be required to prepare a separate annual budget for each parking facility.*

## **Marketing Plan**

10 page maximum (up to 20 points)

Each proposal must include a general marketing plan for the parking facilities, describing how the Contractor would enhance the facilities' revenues, public image, advertising, outreach, and area merchant coordination. The target markets for the parking facilities must be addressed in the marketing plan, as well as plans for increasing parking facilities' patronage. The Contractor should also describe similar marketing strategies by marketing segments which have been successfully employed by the Contractor at comparable facilities. The City wishes to explore all marketing ideas, including courtesies or amenities for its monthly and daily customers. Accordingly, the marketing plan should demonstrate an understanding of the local (Oakland) marketing segments, including varied businesses and residential communities' needs in the areas surrounding the parking facilities. The Contractor's awareness of the communities that the parking facilities serve the needs of businesses and residents, and plans to successfully market to them and meet their needs should also be included in the Contractor's marketing plan.

The Marketing Plan will be evaluated based on how well it will promote the parking facilities, increase revenues, and respond to the users' needs in a cost-effective manner. Creativity and innovation will be considered favorably, as will past examples of the Contractor's marketing successes.

## Format

Each Contractor must submit eight (8) copies of the technical proposal, clearly marked **RFP for Operation and Management of Parking Facilities**. Specifically, all proposal documents shall be:

- 1) placed in a 3-ring binder (tabs or other separators may be used within the binder);
- 2) all pages shall be sequentially numbered and a table of contents shall be provided;
- 3) the paragraph font size on each page shall be 11- or 12-point using Arial, Calibri or Times New Roman font;
- 4) single-space paragraph; and
- 5) printed on double-sided pages and single-spaced.

*Note: Please do not bind your proposal with a spiral or glued binding, or anything similar.*

Each proposer must include two (2) copies, separately bound, of required Pre-Award Forms, contained in Appendix A, in a sealed envelope clearly marked Contract Compliance Forms, Attn: Contract Compliance Office.

Additionally, one (1) electronic copy of the proposal, excluding Contract Compliance Forms, shall be submitted on a compact disk in pdf format, with one-inch left-justified margins (excluding headers, footers and footnotes).

## **D. MINIMUM SUBMISSION REQUIREMENTS**

1. A proposal risks being rejected if any of the following occurs:
  - a. any necessary proposal document is incomplete, misleading or missing;
  - b. any required forms or schedules are left blank, incomplete, or have been altered in any way;
  - c. the Contractor does not meet the relevant experience qualifications and/or failed to submit the required Financial information set forth below;
  - d. the Contractor does not provide additional/clarification information as requested by the City by the specified date; or
  - e. the Contractor is delinquent in payment of any City fees and taxes.
2. The Contractor must prepare the proposal and submit its contents in accordance with the provisions set forth in this **RFP**.

3. Proposal Security (No points awarded, but failure to include will result in rejection of Proposal)

Each Contractor must include with their proposal a proposal security of Ten Thousand Dollars (\$10,000), in the form of a certified or cashier's check payable to the City, or a bid bond naming the City as beneficiary. Promptly after the rejection of any proposal, the City will refund to the Contractor the proposal security, without interest. The proposal security of the selected Contractor will be retained by the City until the Agreement has been approved by all necessary parties and executed by the Contractor. Upon satisfaction of those requirements, the proposal security will be held as part of the security deposit in accordance with the Parking Facility Operation and Management Regulations. Furthermore, immediately upon commencement of the Agreement, the Contractor must provide an additional Two Hundred Thousand Dollar (\$200,000) security deposit in the form of a certified or cashier's check payable to the City of Oakland.

If the selected Contractor fails to execute the Agreement within 15 days after receipt of notice from the City, the proposal and its acceptance may be declared null and void by the City and the proposal security may be retained as liquidated damages to compensate the City for its time and effort. By submitting a proposal, each Contractor acknowledges and agrees that the City's damages would be difficult to determine, and this liquidated damages amount is not a penalty, but is reasonable compensation based upon the facts and circumstances known to the Contractor at the time of its submittal.

4. Financial Stability (No points awarded, but failure to include will result in rejection of Proposal)

Each Contractor must provide proof of financial responsibility as described above under the head "Financial Requirements" (Section I.E).

The Contractor must also submit a signed letter from an insurance agent and/or broker stating that such broker has reviewed the insurance and bond requirements contained in the Agreement, and that the Contractor will be able to obtain and maintain the insurance and bonding required under the Agreement.

The City may submit the above-described information to an outside auditor, who will provide a recommendation based on such information as to whether the Contractor meets the requisite financial stability required to be awarded the Agreement.

5. Attestation Statements and Certifications (No points awarded, but failure to include will result in rejection of Proposal)

The Contractor, Joint Venture Partner and all subcontractors named in a proposal must individually sign the Attestation of Compliance and Certifications attached as Forms 4, 5, and 6 in Appendix A. Any proposal that does not include the executed

Attestation of Compliance and Certifications as required by the RFP will be deemed non-responsive and will not be scored. Any Contractor who violates representations made in the Attestation of Compliance and Certifications, directly or through an agent, lobbyist or subcontractor will be disqualified from the selection process for this contract.

6. Disclosure of Business Interests (No points awarded, but failure to include will result in rejection of Proposal)

Each Contractor, including the Joint Venture Partner or Subcontractor providing parking management services, must include a statement in its proposal that discloses all parking-related businesses, including but not limited to parking garages, parking lots and valet-assisted parking services, located or operated in the City in which the Contractor either has an interest or proposes to have an interest. For purposes of this requirement, a reportable interest shall be any ownership interest of five percent or greater.

### **III. SELECTION PROCESS**

#### **A. DEADLINE, TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS**

##### **Deadline**

Proposal packages, together with the proposal security described above, must be received by 2:00 p.m., August 6, 2013, delivered in person to the Reception Desk for Public Works Agency, 250 Frank H. Ogawa Plaza, Suite 4313, Oakland, California 94612.

Proposals submitted by fax or email will not be accepted. Late submissions will not be considered. Proposals must be received by the due date and time. Postmarks will not be considered to determine whether a proposal was submitted in a timely manner.

##### **Terms and Conditions for Receipt of Proposals**

#### **1. ERRORS AND OMISSIONS IN RFP**

Contractors are responsible for reviewing all portions of this RFP, the Agreement and all forms and exhibits of each. Contractors must promptly notify the City in writing if the Contractor discovers any ambiguity, discrepancy, omission, or other error in the RFP.

Any such notification should be directed to the City promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals. The City will issue modifications and clarifications by addenda as provided below.

## 2. INQUIRIES REGARDING RFP

Inquiries regarding the RFP other than inquiries at the mandatory pre-proposal conference must be directed to:

Michael Ford  
250 Frank Ogawa Plaza, Suite 4344  
Oakland, California 94612  
Email: mford@oaklandnet.com

Any inquiry or clarification will be shared with other prospective Contractors who attended the mandatory pre-proposal conference by email only.

## 3. OBJECTIONS TO RFP TERMS

Should a Contractor object on any grounds to any provision or legal requirement set forth in this RFP, the Contractor must, not more than ten calendar days after the RFP is issued or amended (if the objection relates to an amendment), provide written notice to the City specifying the grounds for the objection. The failure of a Contractor to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

## 4. ADDENDA TO RFP

The City may modify this RFP, prior to the proposal due date, by issuing written addenda to all Contractors who attended the mandatory pre-proposal conference. The Contractor shall be responsible for ensuring that its proposal reflects any and all addenda issued by the City prior to the proposal due date, regardless of when the proposal is submitted. Therefore, the City recommends that the Contractors consult with the City frequently to check for updates, including (shortly before the proposal due date) determining if the Contractor has received all addenda.

## 5. VALIDITY OF PROPOSAL

Submission of a proposal signifies that the Contractor's offer, excluding personnel, remains open for 12 months from the proposal due date and that the offer is genuine and not the result of collusion or any other anti-competitive activity.

## 6. ERRORS AND OMISSIONS IN PROPOSAL

Failure by the Contractor to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the Contractor from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

## 7. FINANCIAL RESPONSIBILITY

The City accepts no financial responsibility for any costs or other liability incurred by a firm in responding to this RFP. Submissions of proposals in response to this RFP will become the property of the City and may be used by the City in any way deemed appropriate.

## 8. RESERVATIONS OF RIGHTS BY THE CITY

The issuance of this RFP does not constitute a promise or agreement by the City that the agency will enter into a contract. The City expressly reserves the right at any time to:

1. Waive any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a RFP;
4. Procure any service by any other means;
5. Extend deadlines for accepting responses, or accept amendments to responses after expiration of deadlines;
6. Declare impasse with a selected Contractor and offer the contract to the next highest ranked Contractor; or
7. Determine that no project will be pursued.

*NOTE: all submitted proposals become the property of the City and will not be returned.*

## 9. NO WAIVER

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a Contractor to observe any provision of this RFP.

## 10. LOCAL/SMALL LOCAL BUSINESS ENTERPRISE (L/SLBE) GOALS AND OUTREACH

During the term of the contract, any failure to comply with the level of L/SLBE subcontractor participation specified in the contract shall be deemed a material breach of contract. Subcontractor goals can only be met with certified Local Business Enterprises located in Oakland.

11. BUDGET YEAR/FISCAL YEAR – SPECIAL DATES OF FIRST BUDGET TO BE PREPARED

The selected Contractor will prepare, and submit for approval, budgets for the parking facilities that are the same as the City's fiscal year (July 1 to June 30); however, if the starting date of the contract is not the same as the budget year, the Contractor, in its first year of operation of the parking facilities, will prepare its initial budget with a budget start date that is the contract start date, and with a budget ending date of June 30, 2014. Subsequent budgets will be based on the City's July 1 to June 30 fiscal years.

12. COMMUNICATIONS PRIOR TO CONTRACT AWARD

It is the policy of the City that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Contractors or potential Contractors. This prohibition extends from the date the RFP is issued until the date when the contractor selection is finally approved by the City Council.

All firms and subcontractors responding to this RFP are hereby notified that they may not contact any City staff member, other than a person with whom contact is expressly authorized by this RFP, for the purpose of influencing the contractor selection process or the award of the contract from the date the RFP is issued to the date when the contract award is approved by the City Council. This prohibition does not apply to communications with the City or staff members regarding normal City or business not regarding or related to this RFP.

All firms and subcontractor(s) responding to this RFP are hereby notified that any written communications sent to one or more members of the City Council concerning this RFP contract solicitation shall be distributed by the City to all members of the City Council and the designated staff contact person(s) identified in the RFP.

Except as expressly authorized in the RFP, where any person representing a Contractor or potential Contractor contacts any City staff or any member/s of the City Council or their staff for the purpose of influencing the content of the competitive solicitation or the award of the contract between the date when the RFP is issued and the date when the final selection is approved by the City Council, the Contractor or potential Contractor shall be automatically disqualified from the selection process. However, a person who represents a Contractor or potential Contractor may contact the City Administrator if she/he is unable to reach the designated staff contact person(s) identified in the RFP.

Additionally, the firms and subcontractors responding to this RFP will not provide any gifts, meals, transportation, materials or supplies or any items of value or donations to or on behalf of any City staff member or elected official from the date the RFP is issued to the date when the contract award is approved by the City Council or thereafter in relation to this RFP.

All lobbyists or any agents representing the interests of proposing prime contractors and subcontractor(s) shall also be subject to the same prohibitions as listed in this section (III.A.12).

An executed Attestation of Compliance (Form 4 of Appendix A) and Certification Regarding Lobbying (Form 5 of Appendix A), certifying compliance with this section of the RFP, will be required to be completed, signed and submitted by all Primes in attendance at the Mandatory Pre-proposal Conference and by all Primes and named subcontractors as part of the response to this RFP.

Any proposal that does not include these executed attachments, as required by this section, will be deemed non-responsive and will not be evaluated. Any Contractor who violates the representations made in such Attestation of Compliance and Certification Regarding Lobbying, directly or through an agent, lobbyist or subcontractor will be automatically disqualified from the selection process.

### 13. RESOURCE CONSERVATION

All documents submitted in response to this RFP must be on recycled paper and printed on double-sided pages to the maximum extent possible, unless otherwise required herein.

### B. EVALUATION OF PROPOSALS

An appointed Selection Panel will review and score all Responsive Proposals, based on two categories:

1. *Written Proposal (Up to 150 Points); and*
2. *Oral Interview/Presentation (Up to 50 Points)*

The top three or four proposers, based on the scores received on written proposals, shall be required to appear (in no particular order) before the selection committee for an oral interview and presentation of the Proposal and detailed discussion of the various elements of their Proposal. It is the City's desire that the proposed on-site Operations Manager/s be present during the presentations and discussions at the oral interview. Questions from the selection committee may be directed to a specific member of the Contractor's team. The Contractor's Operations Team will be required to participate in the presentation and oral interview.



ITEM	MAXIMUM POINTS
Written Proposal:	
Executive Summary (not scored)	N/A
Qualifications and Experience	35
Overall organization and clarity of proposal	10
Management Approach: Staffing/Operational Plan, Maintenance Plan, Security and Safety Plan, Capital Improvement Plan and Start up Plan	45
Budget: Management Fee and Reimbursable Costs	40
Marketing Plan and Revenue Increase	20
Oral Interview/Presentation	50
<b>TOTAL</b>	<b>200</b>

### C. CONTRACT AWARD

The City intends to award the contract to the Contractor that it believes will provide the best, most professional overall parking operation and management services at a competitive cost. The City intends to award the contract to the highest ranked Contractor.

*Note: The contract will not be awarded until such time as the City Council adopts a resolution awarding the Agreement to the City Staff's recommended Contractor.*

The City staff will commence contract negotiations with the highest ranked Contractor. The selection of any proposal shall not imply acceptance by the City of all terms of the proposal, which may be subject to further negotiations and approvals. If a satisfactory contract cannot be negotiated in a reasonable time, the City, in its sole discretion, may terminate negotiations with the highest-ranked Contractor and begin contract negotiations with the next highest-ranked Contractor.

## Form of Contract

The successful Contractor will be required to enter into a contract with the City. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsements, surety bonds, letter of credit or other materials required in the contract, shall be deemed an abandonment of a contract offer. If the highest-ranked Contractor fails to comply with these requirements, the City, in its sole discretion, may select another Contractor and may proceed against the originally selected Contractor for damages.

## D. SCHEDULE

The anticipated schedule for selecting a Contractor under this RFP is shown below:

Schedule	Date(s)
Official Advertisement for RFP Issued	June 18, 2013
Mandatory Pre-Proposal Conference and RFP Issued	June 25, 2013
Contractor Qualification Questionnaire Due	July 11, 2013
Deadline for Submission of Written Questions or Requests for Clarification	July 11, 2013
Response to Questions from Prospective Contractors	July 18, 2013
Proposals, Required Documents, and Proposal Security Due	August 6, 2013
Evaluation of Proposals and Interviews of finalists by Independent Selection Panel	August-September, 2013
Council Approval of Staff's recommendation	October, 2013
Contractor submits management transition plan to City	December 2, 2013
Commencement of Contract	January 1, 2013

## E. PROTEST PROCEDURES

### Protest of Non-responsiveness Determination

Within 5 working days of the City's issuance of a notice of non-responsiveness, any firm that has submitted a proposal, and believes that the City has incorrectly determined that its proposal is non-responsive, may submit a written notice of protest. Such notice of protest

must be received by the City on or before the fifth working day following the City's issuance of the notice of non-responsiveness.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Contractor, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

The City reserves the right to proceed with the proposal review and selection process during the five-day protest period. The City will cease the proposal review and selection process only when it receives a notification of decision that is in favor of the protestor.

#### Protest of Contract Award

Within 5 working days of the City's issuance of a notice of intent to award the contract, any responsible firm that has submitted a responsive proposal, and believes that the City has incorrectly selected another Contractor for award, may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day after the issuance of the notice of intent to award.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Contractor, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

The City reserves the right to proceed with contract negotiation with the highest scored Contractor during the five-day protest period. The City will cease the contract negotiation only when it receives a notification of decision that is in favor of the protestor.

#### Delivery of Protests

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the City received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered. Protests must be delivered via email to [mford@oaklandnet.com](mailto:mford@oaklandnet.com) or via postal mail to:

Michael Ford  
250 Frank H. Ogawa Plaza, Suite 4344  
Oakland, CA 94612

## IV. CITY POLICIES, PROGRAMS AND ORDINANCES

It is very important to review and understand all the terms, conditions, policies, and programs listed in this section. The City will award contracts only to firms that are in full compliance. In this section, the term "Contractor" also means "Consultant".

Except as noted above, all Schedules referenced in this section will be provided during the contract execution process as they are not required to be completed at this time. All Schedules and policies, programs and ordinances referenced in this section are available at:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>.

### 1. Pre-Bid, Pre-Proposal or Pre-Submittal Meeting Information

VOLUNTARY or MANDATORY attendance is stated in the Oakland Tribune newspaper Legal Ad, as well as in the Request for Proposals/Qualifications Notice of the project specifications. Topics to be discussed at the meeting may include, but are not limited to, project requirements and mandatory City policies and programs such as the Local/Small Local Business Enterprise Program, the Local Employment Program, the Oakland Apprenticeship Workforce Development Partnership System, Prompt Payment Ordinance, and prevailing wage requirements. Bidders or Proposers unable to attend a VOLUNTARY pre-bid, pre-proposal or pre-submittal meeting should refer to the project specifications and may contact the appropriate person listed in the Notice To Bidders or Request for Proposals/Qualifications Notice.

### 2. Business Tax License

The consultant selected for this contract shall obtain or provide proof of having a current City of Oakland Business Tax Certificate prior to contract execution.

### 3. Sample Professional Services Agreement

Proposers are advised to review this document provided in Appendix B. The City is not inclined to make any changes to the contract language. The awarded consultant will be required to enter into this agreement.

### 4. Insurance Requirements

The awarded consultant will be required to provide proof of all insurance required for the work prior to execution of the contract. See Schedule Q (Appendix C of this RFP).

### 5. Bonding Requirements

Not applicable to professional services agreements.

6. Local and Small Local Business Enterprise Program (L/SLBE)

*This section has been edited and applies only to Professional Services agreements. The full program document is available at:*

[www2.oaklandnet.com/oakca1/groups/contracting/documents/form/oako29719.pdf](http://www2.oaklandnet.com/oakca1/groups/contracting/documents/form/oako29719.pdf)

The consultant shall comply with the L/SLBE program and shall complete combined Schedule C-1, P, U, V - Declaration of Compliance with Americans with Disabilities Act, Nuclear Free Zone Disclosure, Compliance Commitment Agreement, and Affidavit of Non-Disciplinary or Investigatory Action.

- a. Requirement - For this contract, 50% Local and Small Local Business Enterprise Program (L/SLBE): There is a 50% minimum participation requirement for all professional services contracts over \$50,000, and all purchases of commodities, goods and associated services over \$50,000. The consultant's and its subconsultants' status as an Oakland certified local or small local firm are taken into account in the calculation.

The City has waived small local business enterprise (SLBE) subcontracting requirements for Oakland certified local businesses that apply for professional services contracts as the prime consultant with the City. The SLBE requirements still applies for non-certified LBEs and non-local business enterprises.

- b. Preference points are earned based on the level of participation proposed prior to the award of a contract. Upon satisfying the minimum 50% requirement, a consultant will earn two (2) preference points. Three (3) additional preference points may be earned at a rate of one (1) point for every additional 10% participation, up to 80% participation of the total contract dollars spent with local Oakland certified firms.
- c. A consultant may earn up to five (5) preference points for local Oakland business participation and additional preference points for being a long term certified business in Oakland regardless of size and for having an Oakland workforce.
- d. In those instances where VSLBE participation is evident, the level of participation will be double-counted towards meeting the requirement.
- e. Additional Preference Points. For Request for Proposal (RFQ) and Request for Qualifications (RFQ), additional Preference Points may be earned for having an Oakland workforce on Non-Construction Contracts.
- f. Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal "evaluation" process allows for additional preference points over and above the number of points earned for technical expertise. Typically 100 points may be earned for the technical

elements of the RFQ. Preference points are awarded over and above the potential 100 points.

- g. Joint Venture and Mentor Protégé Agreements. If a consultant is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to the Office of the City Administrator, Department of Contracts and Compliance, prior to the proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
- h. The consultant shall submit information concerning the ownership and workforce composition of consultant's firm as well as its subconsultants, by completing Schedule D, Ownership, Ethnicity, and Gender Questionnaire, and Schedule E, Project Team Listing attached and incorporated herein and made a part of this Agreement.
- i. All affirmative action efforts of the consultant are subject to tracking by the City. This information or data shall be used for statistical purposes only. All consultants are required to provide data regarding the make-up of their subconsultants and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by the consultant to hire and/or contract with the individual or entity in question.
- j. In the recruitment of subconsultants, hiring and retention of employees or subconsultants, the City of Oakland requires all consultants to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

7. Contractor's Qualifications - Schedule M, Part A

Contractor represents that Contractor has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of the City. Contractor's services will be performed in accordance with the generally accepted principles and practices applicable to Contractor's trade or profession. The Contractor warrants that the Contractor, and the Contractor's employees and sub-contractors are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to Contractor's performance of the Services. All Services provided

pursuant to this Agreement shall comply with all applicable laws and regulations. Contractor will promptly advise City of any change in the applicable laws, regulations, or other conditions that may affect City's program. This means Contractor is able to fulfill the requirements of this Agreement. Failure to perform all of the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Contractor has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Contractor shall complete Schedule M.

#### 8. Prompt Payment Ordinance

OMC Section 2.06.070 Prompt Payment Terms Required in Notice To Bidders, Request for Proposals/Qualifications and Purchase Contracts. This Agreement is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06. The Ordinance requires that, unless specific exemptions apply. Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the City of Oakland Liaison upon the filing of a compliant claim. Contractor or its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If Contractor or its subcontractor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Contractor progress payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Contractor and its subcontractors, are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Contractors are required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five (5) business days following receipt of payment from the City, The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

Contractor and its subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with a contractor or subcontractor that delivers goods and/or services pursuant to or in connection with a City of Oakland purchase contract.

Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email [vinman@oaklandnet.com](mailto:vinman@oaklandnet.com).

9. Arizona and Arizona-Based Businesses - Schedule B-2

Contractor agrees that in accordance with Resolution No. 82727 C.M.S., neither it nor any of its subsidiaries, affiliates or agents that will provide services under this agreement is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of this agreement with the City of Oakland or until Arizona rescinds SB 1070.

Contractor acknowledges its duty to notify Contracts and Compliance Division, Office of the City Administrator if it's Business Entity or any of its subsidiaries affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this agreement.

10. Pending Dispute Disclosure Policy - Schedule K.

Contractors are required to disclose pending disputes with the City of Oakland when they are involved in submitting bids, proposals or applications for a City contract or transaction involving professional services. This includes contract amendments. Contractor agrees to disclose, and has disclosed, any and all pending disputes to the City prior to execution of this agreement. The City will provide a form for such disclosure upon Contractor's request. Failure to disclose pending disputes prior to execution of this amendment shall be a basis for termination of this agreement.

11. Non-Discrimination/Equal Employment Practices - Schedule C-1, P, U, V

Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Contractor agrees as follows:

Contractor and Contractor's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.



Contractor and Contractor's subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Declaration of Compliance with the Americans with Disabilities Act, attached hereto and incorporated herein.

If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Contractor shall submit information concerning the ownership and workforce composition of Contractor's firm as well as its sub Contractors and suppliers, by completing the Ownership, Ethnicity and Gender Questionnaire.

The Project Contractor Team attached and incorporated herein and made a part of this Agreement, Exit Report and Affidavit, attached and incorporated herein and made a part of this Agreement.

All affirmative action efforts of Contractors are subject to tracking by the City. This information or data shall be used for statistical purposes only. All Contractors are required to provide data regarding the make-up of their sub Contractors and agents who will perform City contracts, including the race and gender of each employee and/or Contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.

The City will immediately report evidence or instances of apparent discrimination in City contracts to the appropriate State and Federal agencies, and will take action against Contractors who are found to be engaging in discriminatory acts or practices by an appropriate State or Federal agency or court of law, up to and including termination or debarment.

In the recruitment of subcontractors, hiring and retention of employees or subcontractors, the City of Oakland requires all Contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color,

national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

12. The City's Living Wage Ordinance – Schedule N

Design-Build, Construction Manager At-Risk, or other contracts for public works of improvement that involve services of licensed professionals, such as, but not limited to, architects and engineers, are subject to Oakland's Living Wage Ordinance, Oakland Municipal Code, Title 2, Chapter 2.28, where such services amount to or exceed \$25,000. The ordinance requires that, unless specific exemptions apply or a waiver is granted, all employers contracted to provide services amounting to or exceeding \$25,000, shall provide certain minimum hourly wages and health benefits to employees. The City determines and adjusts the rates annually using the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor as the index. Bidders are required to sign and submit a (Schedule N) certification of intent to comply with the Living Wage Ordinance for design-build, construction manager at-risk or other contracts for public works of improvement that involve services of licensed professionals amounting to or in excess of \$25,000, with their bids/proposals.

13. Equal Benefits Ordinance - Schedule N-1

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.32 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City Contractors (contractors) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The following contractors are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of tmst moneys under the control of or collected by the city; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a Contractor's operations that occur (1) within the City; (2) on real property outside the City if the property is owned by the City or if the City has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the City; and (3) elsewhere in the United States

where work related to a City contract is being performed. The requirements of this chapter shall not apply to subcontracts or sub-contractors.

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as Equal Benefits-Declaration of Nondiscrimination form. For more information, see

[http://library.municode.com/HTML/16308/level2/TIT2ADPE\\_CH2.32EQBEOR.html#TOP](http://library.municode.com/HTML/16308/level2/TIT2ADPE_CH2.32EQBEOR.html#TOP)  
TITLE

14. City of Oakland Campaign Contribution Limits – Schedule O

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits Contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations. If this Agreement requires Council approval, Contractor must sign and date an Acknowledgment of Campaign Contribution Limits Form.

15. Nuclear Free Zone Disclosure - Schedule C-1, P, U, V

Contractor represents, pursuant to the combined form Nuclear Free Zone Disclosure Form that Contractor is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Contractor shall complete the combined form.

16. Consultant Performance Evaluation – Schedule L1

At the end of the project, the Project Manager will evaluate the Consultant's performance in accordance with this form.

17. Violation Of Federal, State, City/Agency Laws, Programs Or Policies:

The City may, in their sole discretion, consider violations of any programs and policies described or referenced in this Request for Proposal a material breach and may take enforcement action provided under the law, programs or policies, and/or terminate the contract, debar contractors from further contracts with City and/or take any other action or invoke any other remedy available under law or equity.

18. Conflict of Interest/Confidentiality/City-Contractor Relationship

Contractor shall avoid all conflicts of interest and respect its relationship with the City by maintaining confidentiality of materials deemed confidential by law. Contractor specifically agrees to the following:

Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this RFQ. Without limitation, the Contractor represents to and agrees with the City that no conflict of interest is created between providing the City services hereunder and any interest Contractor may have with respect to any other person or entity (including but not limited to any federal or state regulatory agency) which has any interest adverse or potentially adverse to the City.

The contractor understands and agrees to successfully provide the services requested by this RFQ. In addition, every communication between Contractor and the City or its special counsel shall be considered to be a confidential communication between client and lawyer (see California Evidence Code Section 952), and the confidential work product of the City Administrator, City Attorney and the City's special counsel, respectively, and therefore shall be held in strict confidence. All reports, analysis, maps, diagrams or any documents prepared or assisted in the preparation of or by the Contractor, shall be considered to be prepared pursuant to said lawyer-client relationship. All of the above mentioned documents are also considered the work product of the City Administrator and shall not be communicated to any person except as specifically authorized in writing signed by the City Administrator and City Attorney.

The Fair Political Practices Act and/or California Government Code Section 1090, among other statutes and regulations may prohibit the City from contracting with a service provider if the service provider or an employee, officer or director of the service providers' firm, or any immediate family of the preceding, or any sub-contractor or contractor of the service provider, is serving as a public official, elected official, employee, board or commission member of the City who will award or influence the awarding of the contract or otherwise participate in the making of the contract. The making of a contract includes actions that are preliminary or preparatory to the selection of a Contractor such as, but not limited to, involvement in the reasoning, planning and/or drafting of solicitations for bids and RFQs, feasibility studies, master plans or preliminary discussions or negotiations.

#### 19. Rejection of Proposal Elements

All responses to the RFP/RFQ become the property of the City. The RFP/RFQ does not commit the City to award an agreement or to pay any cost incurred in the preparation of the proposal. The City reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects of the RFP/RFQ and/or RFP/RFQ process, to reject any or all proposals, whether or not minimum qualifications are met, and to modify, postpone, or cancel the RFP/RFQ without liability, obligation, or commitment to any party, firm, or organization. In addition, the City reserves the right to waive any defects as to form or content of the RFP/RFQ or any responses by any consultant teams and to request and obtain additional information from any candidate submitting a proposal. Furthermore, a proposal **RISKS BEING REJECTED** for any of the following reasons:

- Proposal received after designated time and date.
- Proposal received at other than the designated location.
- Proposal not in compliance with the City of Oakland Local/Small Local Business Enterprise Program.
- Proposal not containing the required elements or exhibits, or not organized in the required format.
- Proposal containing excess or extraneous material not called for in the RFP/RFQ.
- Proposal considered not fully responsive to this RFP/RFQ.

20. Proprietary Information

All proposals/submittals become the property of the City. Label individual pages as "confidential" or "proprietary" information to indicate the desire to withhold financial and proprietary information.

21. Public Records Act or Sunshine Ordinance

Although a document may be labeled "confidential" or "proprietary", information is still subject to disclosure under the Public Records Act or Sunshine Ordinance, and is at the City's discretion based on the potential impact of the public's interest whether or not to disclose "confidential" or "proprietary" information.

22. iSupplier System

Firms must register in iSupplier, the City's payment and procurement system, in order to receive future payments or notifications of contracting opportunities. Without proper registration, your firm may not be receiving notifications from iSupplier regarding contracting opportunities. We recommend updating your firm's primary email contact regularly and confirming the "Products and Services" section of your profile is correctly filled out. For further information, refer to the following link for detailed iSupplier registration instructions.

<http://www2.oaklandnet.com/oakca1/groups/contracting/documents/webcontent/oak039337.pdf>.

If you have any questions, please email [iSupplier@oaklandnet.com](mailto:iSupplier@oaklandnet.com).

When contracting opportunities are uploaded into iSupplier, it creates a unique "Request for Quotation" tracking/reference number and a three page introductory document which need not be submitted at any time. CIPList.com does not assign any such tracking number. Bid or proposal documents downloaded from CIPList.com will not include this iSupplier document.

**END OF RFP**

## V. APPENDICES

### APPENDIX A: FORMS REQUIRED WITH SUBMISSION

1. Contractor Qualification Questionnaire
2. Authorization for Release of Credit Information
3. Facility Management Proposal Form
4. Attestation of Compliance
5. Certification Regarding Lobbying
6. Certification Regarding Debarment, Suspension and Other Responsibility Matters
7. Schedule E: Project Consultant Team Listing
8. Schedule O: Campaign Contribution Limits

### APPENDIX B: SAMPLE PROFESSIONAL SERVICES AGREEMENT AND EXHIBITS

- Exhibit A. Scope of Management Services (23 pages)
- Exhibit B. Maintenance Standards (2 pages)
- Exhibit C. Maintenance Schedule (3 pages)
- Exhibit D. Parking Facility Operation and Management Regulations (19 pages)

### APPENDIX C: SCHEDULE Q – PROFESSIONAL SERVICES INSURANCE REQUIREMENTS

### APPENDIX D: STRUCTURAL AND OPERATING CHARACTERISTICS OF PARKING FACILITIES

**Appendix A: Forms Required with Submission**

**1. CONTRACTOR QUALIFICATION QUESTIONNAIRE**

**QUESTIONNAIRE CONCERNING EXPERIENCE, FINANCIAL AND TAXPAYER RESPONSIBILITY OF CONTRACTOR FOR THE PARKING FACILITIES OPERATION AND MANAGEMENT AGREEMENT**

*NOTE: Contractors must submit the completed pre-qualification questionnaire to the City no later than 2pm on July 11, 2013.*

The following statements as to experience, financial and taxpayer responsibility qualifications of the Contractor are submitted along with a waiver authorizing the City Tax Collector to confirm the status of the Contractor with respect to payment of local business taxes and fees as a part thereof (see below Appendix A.2 Authorization for Release of Credit Information). Any material misstatement of the information submitted herein will be grounds to prohibit the Contractor from submitting a proposal.

1. Name: \_\_\_\_\_

(Print name of corporation, individual or firm name)

Tel No.: ( ) \_\_\_\_\_ Fax No.: ( ) \_\_\_\_\_

2. Mailing Address: \_\_\_\_\_

St. Address/P.O. Box City State Zip Code

3. Contractor Intends to do Business as a: (type of entity as it will appear on the Agreement)

Corporation Co-Partnership Joint Venture Individual

4. Contractor's Oakland Business Tax Registration

Certificate No. \_\_\_\_\_

A copy of the current year's certificate must be submitted with the questionnaire. If a joint venture proposal is to be submitted, provide certificate numbers and submit copies of certificates for each joint venture partner.

5. Full Name, Title and Address of all of the principal personnel of Contractor:

If an individual, the name of the party bidding; if a co-partnership or joint venture, the members of the co-partnership or joint venture; if a corporation, the State of Incorporation, the president, vice-president and secretary.



Personnel of Contractor: (Full name - Do not use initials)

A.

First Name	Middle Name	Last Name
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Title or Position (Co-Partner, joint venture member, officer of a corporation, or individual)

Business Address	City	State	Zip Code
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B.

First Name	Middle Name	Last Name
------------	-------------	-----------

Title or Position (Co-Partner, joint venture member, officer of a corporation, or individual)

Business Address	City	State	Zip Code
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C.

First Name	Middle Name	Last Name
------------	-------------	-----------

Title or Position (Co-Partner, joint venture member, officer of a corporation, or individual)

Business Address	City	State	Zip Code
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(Use separate sheet for additional personnel)

**6. Parking Garage or Lot Management Experience (Last Five Years):**

*Note: All parking experience stated below must be within the United States*

**A. General**

**Parking Garages**

Average Number Managed:	
Annual Average Gross Parking Related Revenue:	\$
Total Annual Number of Parking Related Employees:	Full Time: _____ Part Time: _____
Type of Garage Operation (provide number of each):	Self-Park: _____ Attendant Park: _____ Combination: _____

**Surface Lots**

Average Number Managed:	
Annual Average Gross Parking Related Revenue:	\$
Total Annual Number of Parking Related Employees:	Full Time: _____ Part Time: _____
Type of Garage Operation (provide number of each):	Self-Park: _____ Attendant Park: _____ Combination: _____

**B. Specific**

1. Name of Parking Facility:	
Type of Facility (check one):	Parking Garage      Surface Lot
Address:	
Name of Contractor (if different than Contractor):	
Name of Owner or Agent:	
Telephone:	
Number of Spaces:	
Dates of Operation:	
Cite Specific Duties Performed:	
Yearly Vehicle Volume (provide number of each):	Transient: _____ Monthlies: _____
Average Number of Days Operated Per Year:	
Yearly Gross Parking Related Revenues:	\$ _____
Total Annual Number of Parking Related Employees:	Full Time: _____ Part Time: _____
Type of Operation (provide number of each):	Self-Park: _____ Attendant Park: _____ Combination: _____

2. Name of Parking Facility:	
Type of Facility (check one):	Parking Garage      Surface Lot
Address:	
Name of Contractor (if different than Contractor):	
Name of Owner or Agent:	
Telephone:	
Number of Spaces:	
Dates of Operation:	
Cite Specific Duties Performed:	
Yearly Vehicle Volume (provide number of each):	Transient: _____ Monthlies: _____
Average Number of Days Operated Per Year:	
Yearly Gross Parking Related Revenues:	\$ _____
Total Annual Number of Parking Related Employees:	Full Time: _____ Part Time: _____
Type of Operation (provide number of each):	Self-Park: _____ Attendant Park: _____ Combination: _____

3. Name of Parking Facility:	
Type of Facility (check one):	Parking Garage      Surface Lot
Address:	
Name of Contractor (if different than Contractor):	
Name of Owner or Agent:	
Telephone:	
Number of Spaces:	
Dates of Operation:	
Cite Specific Duties Performed:	
Yearly Vehicle Volume (provide number of each):	Transient: _____ Monthlies: _____
Average Number of Days Operated Per Year:	
Yearly Gross Parking Related Revenues:	\$ _____
Total Annual Number of Parking Related Employees:	Full Time: _____ Part Time: _____
Type of Operation (provide number of each):	Self-Park: _____ Attendant Park: _____ Combination: _____

7. Provide a brief history of Contractor's (including the Joint Venture Partner or Sub-contractor providing parking management services) parking experience and describe Contractor's experience with the use of automated pay station and automated parking access and revenue control equipment and software, including sophisticated spreadsheet and information retrieval and organization software, including but not limited to Microsoft Excel and other financial reporting software, Power Point, and any experience with internet reservations, cell phone reservations, parking guidance systems, variable pricing for including Special Event Pricing, Peak Demand Pricing and Market Based Pricing to maintain target occupancy levels (3 pages maximum).

8. List on a separate page any businesses or business interests located or doing business in Oakland in which the Contractor, including the Joint Venture Partner or Subcontractor providing parking management services, or individuals who control the Contractor have an interest. For each such interest, list the entity or individual, nature of the business, and term of the agreement, if applicable. If the Contractor wishes to have the response to this question treated as proprietary business information, the page containing this information should be clearly designated as such.

9. Has the Contractor or any of its management staff, including the Joint Venture Partner or Sub-contractor providing parking management services under a parking management contract ever received a notice of default or breach of contract, even if such a default was cured at a later date?

Yes No

10. Has the Contractor or any of its management staff including the Joint Venture Partner or Sub-contractor providing parking management services ever requested release from a parking management contract?

Yes No

11. Has the Contractor or any of its management staff including the Joint Venture Partner or Sub-contractor providing parking management services ever managed a parking operation in which the parking contract was cancelled or terminated by the owner?

Yes No

12. Has the Contractor or any of its management staff including the Joint Venture Partner or Sub-contractor providing parking management services ever been a party to any legal action or proceeding relating to a parking contract? Does the Contractor have any outstanding claims against any parking facility owners or their staff?

Yes No

13. Has the Contractor, any of its management staff including the Joint Venture Partner or Sub-contractor providing parking management services, or any firms controlled by any management staff previously been employed by or associated with a firm that has filed for bankruptcy in the last ten years?

Yes No

14. Is the Contractor or any of its management staff including the Joint Venture Partner or Sub-contractor providing parking management services now in arrears on taxes or fees due on any parking business or operation?

Yes No

15. Has the Contractor or any of its management staff including the Joint Venture Partner or Sub-contractor providing parking management services ever been the subject of an enforcement action taken by any governmental body for the non-payment of taxes or violations of any city, county, state or federal regulation, ordinance or statute?

Yes No

*NOTE: If the answer to any of the items 9-15 is "Yes", please explain below. Place the corresponding question number before each response. Attach separate sheet if necessary.*

**2. AUTHORIZATION FOR RELEASE OF CREDIT INFORMATION**

The undersigned hereby authorizes the companies and/or individuals listed below to release to the City all pertinent and confidential information concerning the credit standing or account status of:

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Authorized Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name & Title

(1) Name of Bank: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Tel. No.: ( ) \_\_\_\_\_  
Account No. \_\_\_\_\_  
Type of Account: \_\_\_\_\_  
Account No. \_\_\_\_\_  
Type of Account: \_\_\_\_\_

(2) Name of Bank: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Tel. No.: ( ) \_\_\_\_\_  
Account No. \_\_\_\_\_



Type of Account: \_\_\_\_\_

Account No. \_\_\_\_\_

Type of Account: \_\_\_\_\_

(3) Name of Surety Company: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Tel. No.: ( ) \_\_\_\_\_

Policy No. \_\_\_\_\_

Type of Bond: \_\_\_\_\_

Policy No. \_\_\_\_\_

Type of Bond: \_\_\_\_\_

**WAIVER**

The undersigned taxpayer ("Taxpayer") hereby requests and authorizes the City Tax Collector of the City of Oakland ("Tax Collector") to disclose confidential information about the Taxpayer and any other entities owned or controlled by the Taxpayer, whether directly or indirectly, to the City. The Taxpayer and each of the entities owned or controlled by the Taxpayer waive all their rights to have information about them in the Tax Collector's possession kept confidential. The Taxpayer and each of the entities owned or controlled by the Taxpayer acknowledge that the information disclosed to the City may adversely affect the City's evaluation of the Taxpayer's suitability to enter into an operating agreement with the City pertaining to management of the parking facilities described in this RFP.

The Taxpayer agrees to hold the Tax Collector, City of Oakland and its staff as well as its elected officials and their staff harmless from any liability, claims, losses and damages caused by the Tax Collector's disclosure of confidential information about the Taxpayer and/or the entities owned or controlled by the Taxpayer.

This request and authorization is limited to the following specific items of information:

1. Outstanding parking taxes.
2. Outstanding business/payroll taxes.
3. Payment history of parking, business and payroll taxes.

4. Audit history, if any, including audits in progress
5. Filing history of parking, payroll and business tax returns.
6. Payment of miscellaneous license or permit fees.
7. Payment of possessory interest taxes.

**THE TAXPAYER:**

**OTHER ENTITIES:**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Name: \_\_\_\_\_  
(Print Name)

By: \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

If other entities exist, please list them on a separate sheet of paper and attach them.

### 3. FACILITY MANAGEMENT PROPOSAL FORM

Name of Contractor: \_\_\_\_\_

1. The undersigned is a Contractor for the operation and management of the parking facilities in accordance with the Request for Proposals ("RFP") for the Operation and Management of Parking Facilities issued by the City of Oakland on June 25, 2013. All undefined terms used herein have the meaning given to such terms in the RFP.
2. If Contractor is selected to enter into the Agreement, the monthly Management Fee shall be as stated by the Contractor in the cost proposal or as negotiated by the City. In addition, if Contractor is selected to enter into the Agreement, the City will negotiate a performance based fee with the Contractor based on two performance criteria: Customer Satisfaction Survey and Net Revenues.
3. The undersigned has thoroughly reviewed the RFP and the Sample Service Agreement. Contractor fully understands every provision therein and is ready, willing, and able to comply with all requirements and is willing and able to perform all obligations as set forth in this proposal and the Management Agreement (as described in Exhibits A-D to Appendix B).
4. All of Contractor's statements, representations and warranties in the proposal submitted with this certificate are true and correct as of the date hereof
5. Contractor understands and agrees that the City makes no representations or warranties with respect to the parking facilities, and that everything relevant to Contractor's proposal has been based on Contractor's own knowledge and the information contained in the written RFP materials.
6. Contractor has not agreed to pay now or in the future, and has not in fact paid, directly or indirectly, any fee, commission, or other thing of value to any City employee, agent, representative, elected official, or contractor in an effort to influence the selection of the successful proposal.
7. The terms of this certification shall survive the date hereof and are a material part of the City's willingness to consider Contractor's submittal. The City will not consider Contractor's submittal without this certification and the proposal will be automatically disqualified.
8. The undersigned represents that it has no conflict of interest that could interfere with its operation and management of the parking facilities.
9. Contractor states that it is familiar with the City's Procurement and Contracting Laws and certifies that it knows of no facts which would constitute a violation of such provisions. Contractor further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Contractor believes any officer or fellow employee of the City or the City presently has or will have in the agreements contemplated by this proposal or in the performance thereof or in any portion of the profits thereof

10. The undersigned are authorized representatives of the Contractor.

\_\_\_\_\_ Title \_\_\_\_\_

\_\_\_\_\_ Title \_\_\_\_\_

**4. ATTESTATION OF COMPLIANCE**

To be completed by all Proposing Firms and All Individual Subcontractors

(Proposing firms should check each box below, sign this form and submit it during the Mandatory Pre-proposal conference on June 25, 2013; individual subcontractors not present at the Mandatory Pre-proposal conference should do the same and submit with the completed proposal.)

Name of Individual Completing this Form: \_\_\_\_\_

The Form is submitted on Behalf of Firm: \_\_\_\_\_

Name of RFP: **REQUEST FOR PROPOSALS FOR OPERATION AND MANAGEMENT OF PARKING FACILITIES**

1. I attest that I and all members of the firm including subcontractors listed above will and have complied to date with Section II.A.12, Communications Prior to Contract Award, of the above RFP.

Yes

2. I understand that if my firm or any members of the firm including subcontractors listed above are found to be in violation of Section III.A.12 of the above RFP, this will disqualify my firm and any Proposal in which my firm is named from further consideration.

Yes

I have entered required responses to the above questions to the best of my knowledge and belief

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## 5. CERTIFICATION REGARDING LOBBYING

---

(Contractor or Proposed Subcontractor Business Name)

certifies that it will not and has not paid any person or organization for influencing or attempting to influence a member of the Oakland City Council, the Oakland City Administrator's Office, or an officer or employee of the City of Oakland in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in this Request for Proposals. The Contractor or proposed subcontractor submitting this certification shall also disclose the name of any lobbyist who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals.

This certification is a material representation of fact upon which reliance was placed for the purposes of the City's evaluation of Proposals and award of a contract pursuant to the Request for Proposals. Submission of this certification is a prerequisite for submitting a Proposal responsive to the Request for Proposals.

Following submission of Proposals with this signed certification, any firm who 1) pays any person or organization for influencing or attempting to influence a member of the Oakland City Council or any of its staff, or an officer or employee of the City of Oakland in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in the RFP, 2) fails to disclose the name of any lobbyist who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals, or 3) pays or agrees to pay to any City employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the any fee or commission, or any other thing of value contingent on the award of a contract, will disqualify any Proposal in which that firm is named as a prime contractor, joint venture partner or subcontractor from the selection process.

By signing and submitting its proposal, the Contractor or proposed subcontractor also certifies to the City that the Contractor or proposed subcontractor has not paid, nor agreed to pay, and will not pay or agree to pay, any fee or commission, or any other thing of value contingent on the award of a contract to any City employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the City.

As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative Name (print)

\_\_\_\_\_  
Authorized Representative Title (print)

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Date

**6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

By signing and submitting its Proposal, the Contractor or proposed subcontractor certifies as follows:

---

(Contractor or Proposed Subcontractor Business Name)

(1) Certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from contracting with any federal, state or local governmental department or agency;
- b. Have not within a three-year period preceding the date of this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) b. of this certification; and
- d. Have not within a three-year period preceding the date of this Proposal had one or more public contracts (federal, state, or local) terminated for cause or default.

(2) Where the firm executing this RFP is unable to certify to any of the statements in this certification, such firm shall attach a detailed explanation of facts that prevent such certification.

(3) The certification in this clause is a material representation on fact relied upon by the City of Oakland

As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative Name (print)

\_\_\_\_\_  
Authorized Representative Title (print)

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Date



**7. SCHEDULE E: PROJECT CONSULTANT TEAM LISTING**

# SCHEDULE E PROJECT CONSULTANT TEAM LISTING



PROJECT NAME : \_\_\_\_\_

Prime consultants shall list ALL subconsultants regardless of tier and their approximate percentage of work. All percentages must total 100%. Only the subconsultants listed below may be used. The prime agrees that no company changes will be made to this listing without written approval of the City. Companies must be certified by the City prior to submittal in order to receive Local/Small Local Business Enterprise (LBE, SLBE) credits.

Type of Work	Company Name	Address and City	Phone No.	% of Work	Local (LBE)	Small Local (SLBE)	* Ethnicity	** Gender
name of prime:					<input type="checkbox"/>	<input type="checkbox"/>		
					<input type="checkbox"/>	<input type="checkbox"/>		
					<input type="checkbox"/>	<input type="checkbox"/>		
					<input type="checkbox"/>	<input type="checkbox"/>		
					<input type="checkbox"/>	<input type="checkbox"/>		
					<input type="checkbox"/>	<input type="checkbox"/>		
					<input type="checkbox"/>	<input type="checkbox"/>		

Prime Consultant Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Attach additional pages if necessary.

Contractors are required to identify the ethnicity and gender of the majority owners of listed firms. This information will be used for tracking purposes only.

\* (AA=African American) (AI=Asian Indian) (AP=Asian Pacific) (C=Caucasian) (H=Hispanic) (NA=Native American) (O=Other) (NL=Not Listed)

\*\* (M = Male) (F = Female)

**8. SCHEDULE O: CAMPAIGN CONTRIBUTION LIMITS**

**ATTENTION: CONTRACTORS DOING BUSINESS  
WITH THE CITY OF OAKLAND**

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**IMPORTANT NOTICE OF CAMPAIGN  
CONTRIBUTION REPORTING REQUIREMENTS**

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The Oakland Campaign Reform Act prohibits contractors doing business or seeking to do business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District from making campaign contributions to Oakland candidates between commencement of negotiations and either one hundred eighty (180) days after completion or termination of contract negotiations.

Effective July 27, 1999, if you are a contractor doing business with, or submitting a proposal to do business with, the City of Oakland or the Oakland Redevelopment Agency, you are required, pursuant to the City's Campaign Reform Act, to sign and date the attached ACKNOWLEDGEMENT OF CAMPAIGN CONTRIBUTION LIMITS FORM at the time you formally submit a bid, proposal, qualification or contract amendment.<sup>1</sup>

The attached ACKNOWLEDGEMENT must be received at the same time the bid, proposal, qualification or contract amendment is submitted. Contracts may not be awarded to any contractors who have not signed this certification. In addition, failure to file this form with any proposal or submittal subject to Section 3.12.140 of the Oakland Campaign Reform Act, or filing a false acknowledgement, shall subject you to the criminal and civil enforcement provisions contained in the Act. The Oakland Public Ethics Commission is charged with enforcing the provisions of the Act.

The City Clerk shall keep an updated list of current contractors available for inspection. The Campaign Reform Act, Oakland Municipal Code Section 3.12, is available for your review at the City Clerk's Office, One Frank Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland, CA. You may also access the Campaign Reform Act on the City's website at [www.oaklandnet.com](http://www.oaklandnet.com).

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<sup>1</sup> The attached ACKNOWLEDGEMENT is required for contractors seeking to do business with the City of Oakland and Oakland Redevelopment Agency. For contracts with the Oakland Unified School District, please contact the Oakland Unified School District.



**CONTRACTOR ACKNOWLEDGEMENT OF CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS  
FOR CONSTRUCTION, PROFESSIONAL SERVICE & PROCUREMENT CONTRACTS**

To be completed by City Representative prior to distribution to Contractor

City Representative Michael Ford Phone (510) 238-7670 Project Spec No. \_\_\_\_\_

Department PWA - DEC Contract/Proposal Name RFP-Operation & Management of Parking Facilities

This is an \_\_\_ Original \_\_\_ Revised form (check one). If Original, complete all that applies. If Revised, complete Contractor name and any changed data.

Contractor Name \_\_\_\_\_ Phone \_\_\_\_\_

Street Address \_\_\_\_\_ City \_\_\_\_\_, State \_\_\_\_\_ Zip \_\_\_\_\_

Type of Submission (check one)  Bid  Proposal  Qualification  Amendment

Majority Owner (if any). A majority owner is a person or entity who owns more than 50% of the contracting firm or entity.

Individual or Business Name \_\_\_\_\_ Phone \_\_\_\_\_

Street Address \_\_\_\_\_ City \_\_\_\_\_, State \_\_\_\_\_ Zip \_\_\_\_\_

The undersigned Contractor's Representative acknowledges by his or her signature the following:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland and the Oakland Redevelopment Agency during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act and certify that I/we have not knowingly, nor will I Ave make contributions during the period specified in the Act.

I understand that the contribution restrictions also apply to entities/persons affiliated with the contractor as indicated in the Oakland Municipal Code Chapter 3.12.080.

If there are any changes to the information on this form during the contribution-restricted time period, I will file an amended form with the City of Oakland.

\_\_\_\_\_  
Signature

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Signer

\_\_\_\_\_  
Position

To be Completed by City of Oakland after completion of the form

Date Received by City: \_\_\_\_/\_\_\_\_/\_\_\_\_ By \_\_\_\_\_

Date Entered on Contractor Database: \_\_\_\_/\_\_\_\_/\_\_\_\_ By \_\_\_\_\_

**APPENDIX B: SAMPLE PROFESSIONAL SERVICES AGREEMENT AND EXHIBITS**

**EXHIBIT A: SCOPE OF SERVICES**

**EXHIBIT B: MAINTENANCE STANDARDS**

**EXHIBIT C: MAINTENANCE SCHEDULE**

**EXHIBIT D: PARKING FACILITY OPERATION AND MANAGEMENT REGULATION**

**CITY OF OAKLAND  
PROFESSIONAL OR SPECIALIZED SERVICE AGREEMENT**

Whereas, the City Council has authorized the City Administrator to enter into contracts for professional or specialized services if the mandates of Oakland City Charter Section 902(e) have been met.

Now therefore the parties to this Agreement covenant as follows:

**1. Parties and Effective Date**

This Agreement is made and entered into as of (insert date) by and between the CITY OF OAKLAND, a municipal corporation, (hereinafter referred to as "City") and (Consultant Name) (hereinafter referred to as "Consultant") for (Project No. and Name).

**2. Scope of Services**

Consultant agrees to perform the services specified in Exhibit A - Scope of Services, attached to this Agreement and incorporated herein by reference. Consultant shall designate an individual who shall be responsible for communications with the City for the duration of this Agreement.

**3. Time of Performance**

Consultant's services shall begin on (date) and shall be completed by (date).

**4. Compensation and Method of Payment**

Consultant will be paid for performance of the entire scope of services an amount that will be based upon actual costs but that will be "Capped" so as not to exceed (Enter dollar amount and 00/100 dollars (\$0.00)), based upon Exhibit A and the budget by deliverable task and billing rates in Exhibit B - Billing Rates. The maximum that will be charged for the entire scope of services will not exceed the Capped amount, even if the Consultant's actual costs exceed the Capped amount. Invoices shall state a description of the deliverables completed and the amount due. Payment shall be due upon completion and acceptance of the deliverables.

**OR**

Consultant will be paid for performance of the entire scope of services set forth in Exhibit A an amount not to exceed (Enter dollar amount and 00/100 dollars (\$0.00)), based upon the fee(s) or lump sum(s) for each of the deliverables stated in Exhibit A. Invoices shall state a description of the deliverables completed and the amount due. Payment shall be due upon completion and acceptance of each of the deliverables.

**OR**

Consultant will be paid for performance of the entire scope of services set forth in Exhibit A an amount not to exceed (Enter dollar amount and 00/100 dollars (\$0.00)), based upon the rates stated in Exhibit B – Billing Rates. Invoices shall state a description of the services completed and the amount due. Payment shall be due upon completion and acceptance of the services.

In the aggregate, progress payments will not exceed ninety percent (90%) of the total amount of the contract, with the balance to be paid upon satisfactory completion of the contract. Progress, or other payments, will be based on at least equivalent services rendered, and will not be made in advance of services rendered.

In computing the amount of any progress payment (this includes any partial payment of the contract price during the progress of the work, even though the work is broken down into clearly identifiable stages, or separate tasks), the City will determine the amount that the consultant has earned during the period for which payment is being made, on the basis of the contract terms. The City will retain out of such earnings an amount at least equal to ten percent (10%), pending satisfactory completion of the entire contract.

5. Independent Contractor

a. Rights and Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Consultant shall be, and is, an independent contractor, and is not an employee of the City. Consultant has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Consultant in the performance of Consultant's services hereunder. Consultant shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Consultant's own acts and those of Consultant's subordinates and employees. Consultant will determine the method, details and means of performing the services described in Exhibit A.

b. Consultant's Qualifications

Consultant represents that Consultant has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of The City. Consultant's services will be performed in accordance with the generally accepted principles and practices applicable to Consultant's trade or profession. The Consultant warrants that the Consultant, and the Consultant's employees and sub-consultants are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to Consultant's performance of the Services. All Services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Consultant will promptly advise City of any change in the applicable laws, regulations, or other conditions that may affect City's program. This means Consultant is able to fulfill



the requirements of this Agreement. Failure to perform all of the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Consultant has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Consultant shall complete Schedule M, Part A, Independent Contractor Questionnaire, Part A, attached hereto.

c. Payment of Income Taxes

Consultant is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by the City to Consultant for services under this Agreement. On request, Consultant will provide the City with proof of timely payment. Consultant agrees to indemnify the City for any claims, costs, losses, fees, penalties, interest or damages suffered by the City resulting from Consultant's failure to comply with this provision.

d. Non-Exclusive Relationship

Consultant may perform services for, and contract with, as many additional clients, persons or companies as Consultant, in his or her sole discretion, sees fit.

e. Tools, Materials and Equipment

Consultant will supply all tools, materials and equipment required to perform the services under this Agreement.

f. Cooperation of the City

The City agrees to comply with all reasonable requests of Consultant necessary to the performance of Consultant's duties under this Agreement.

g. Extra Work

Consultant will do no extra work under this Agreement without first receiving prior written authorization from the City.

6. Proprietary or Confidential Information of the City

Consultant understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Consultant agrees that all information disclosed by the City to Consultant shall be held in confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information, as a reasonably prudent consultant would use to protect its own proprietary data.

7. Ownership of Results

Any interest of Consultant or its Subconsultants, in specifications, studies, reports, memoranda, computation documents prepared by Consultant or its Subconsultants in drawings, plans, sheets or other connection with services to be performed under this

Agreement shall be assigned and transmitted to the City. However, Consultant may retain and use copies for reference and as documentation of its experience and capabilities.

**8. Copyright**

Consultant shall execute appropriate documents to assign to the City the copyright to works created pursuant to this Agreement

**9. Audit**

Consultant shall maintain (a) a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under this Agreement and (b) full and complete documentation of performance related matters such as benchmarks and deliverables associated with this Agreement

Consultant shall (a) permit the City to have access to those records for the purpose of making an audit, examination or review of financial and performance data pertaining to this Agreement and (b) maintain such records for a period of four years following the last fiscal year during which the City paid an invoice to Consultant under this Agreement

In addition to the above, Consultant agrees to comply with all audit, inspection, record-keeping and fiscal reporting requirements incorporated by reference.

**10. Agents/Brokers**

Consultant warrants that Consultant has not employed or retained any subconsultant, agent, company or person other than bona fide, full-time employees of Consultant working solely for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any subconsultant, agent, company or persons other than bona fide employees any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift

**11. Assignment**

Consultant shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

**12. Publicity**

Any publicity generated by Consultant for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of the City of Oakland in making the project possible. The words "City of Oakland" will be explicitly stated in all pieces of publicity, including but not limited to

flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.

City staff will be available whenever possible at the request of Consultant to assist Consultant in generating publicity for the project funded pursuant to this Agreement. Consultant further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this project.

**13. Title of Property**

Title to all property, real and personal, acquired by the Consultant from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal set of property records. Consultant acknowledges it is responsible for the protection, maintenance and preservation of all such property held in custody for the City during the term of the Agreement. The Consultant shall, upon expiration or termination of this Agreement, deliver to the City all of said property and documents evidencing title to same. In the case of lost or stolen items or equipment, the Consultant shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with "Notice" section of this Agreement.

Consultant shall provide to the City Auditor all property-related audit and other reports required in Schedule S and under this Agreement. In the case of lost or stolen items or equipment, the Consultant shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the "Notice" section of this Agreement.

Prior to the disposition or sale of any real or personal property acquired with City funds, Consultant shall obtain approval by the City Council and City Administrator in accordance with the requirements for disposal or sale of real or personal surplus property set forth in the Oakland City Charter and/or Oakland Municipal Code Title 2.04, Chapter 2.04.120, Surplus supplies and equipment - Disposal or Destruction.

**14. Insurance**

Unless a written waiver is obtained from the City's Risk Manager, Consultant must provide the insurance listed in Schedule Q, Insurance Requirements. Schedule Q is attached and incorporated herein by reference.

**15. Indemnification**

- a. Notwithstanding any other provision of this Agreement, Contractor shall indemnify and hold harmless (and at City's request, defend) City, and each of their respective Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:

- (i) Breach of Contractor's obligations, representations or warranties under this Agreement;
  - (ii) Act or failure to act in the course of performance by Contractor under this Agreement;
  - (iii) Negligent or willful acts or omissions in the course of performance by Contractor under this Agreement;
  - (iv) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Contractor;
  - (v) Unauthorized use or disclosure by Contractor of Confidential Information as provided in Section 6 Proprietary of Confidential Information of the City above; and
  - (vi) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.
- b. For purposes of the preceding Subsections (i) through (vi), the term "Contractor" includes Contractor, its officers, directors, employees, representatives, agents, servants; sub-consultants and subcontractors.
- c. City shall give Contractor prompt written notice of any such claim of loss or damage and shall cooperate with Contractor, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.
- d. Notwithstanding the foregoing, City shall have the right if Contractor fails or refuses to defend City with Counsel acceptable to City to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due Contractor in the amount of anticipated defense costs plus additional reasonable amounts as security for Contractor's obligations under this Section 15. In no event shall Contractor agree to the settlement of any claim described herein without the prior written consent of City.
- e. Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Contractor by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Contractor's liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.

- f. All of Contractor's obligations under this Section 15 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.
- g. The indemnity set forth in this Section 15 shall not be limited by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Contractor in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

**16. Right to Offset Claims for Money**

All claims for money due or to become due from City shall be subject to deduction or offset by City from any monies due Consultant by reason of any claim or counterclaim arising out of: i) this Agreement, or ii) any purchase order, or iii) any other transaction with Consultant.

**17. Prompt Payment Ordinance**

This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06 (Ordinance 12857 C.M.S, passed January 15, 2008 and effective February 1, 2008). The Ordinance requires that, unless specific exemptions apply, the Consultant and its subconsultants shall pay undisputed invoices of their subconsultants for goods and/or services within twenty (20) business days of submission of invoices unless the Consultant or its subconsultants notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Consultant or its subconsultant and claimant, in which case the Consultant or its subconsultant may withhold the disputed amount but shall pay the undisputed amount.

Disputed late payments are subject to investigation by the City of Oakland Liaison, Office of the City Administrator, Contracts and Compliance Unit, upon the filing of a complaint. Consultant or its subconsultants opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If Consultant or its subconsultant fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Consultant progress payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Consultant and its subconsultants shall not be allowed to retain monies from subconsultant payments for goods as project retention, and are required to release subconsultant project retention in proportion to the subconsultant services rendered, for which payment is due and undisputed, within five (5) business days of payment. Consultant and its subconsultants shall be required to pass on to and pay subconsultants mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Consultant and its subconsultants, are

required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Consultant is required to file an affidavit, under penalty of perjury, that he or she has paid all subconsultants, within five (5) business days following receipt of payment from the City. The affidavit shall provide the names and address of all subconsultants and the amount paid to each.

If any amount due by a prime consultant or subconsultant to any claimant for goods and/or services rendered in connection with a purchase contract is not timely paid in accordance the Prompt Payment ordinance, the prime Consultant or subconsultant shall owe and pay to the claimant interest penalty in the amount of ten percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the claimant agrees to release the prime consultant or subconsultant from any and all further interest penalty that may be claimed or collected on the amount paid. Claimants that receive interest payments for late payment Prompt Payment ordinance may not seek further interest penalties on the same late payment in law or equity.

Consultant and its subconsultants shall include the same or similar provisions as those set forth above in this section in any contract with another consultant or subconsultant that delivers goods and/or services pursuant to or in connection with this City of Oakland purchase contract.

Prompt Payment invoice and compliant forms are available from the City of Oakland's website:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>. Scroll down to the Prompt Payment heading and click on the appropriate links. Invoice and complaint inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email [vinman@oaklandnet.com](mailto:vinman@oaklandnet.com).

**18. Arizona and Arizona-Based Businesses**

As referenced in Schedule B-2, in accordance with Resolution No. 82727 C.M.S. neither this business entity nor any of its subsidiaries, affiliates or agents are headquarters in the State of Arizona or anticipates relocating to the State of Arizona duration for the life of its contract(s) with the City of Oakland or until Arizona rescinds SB 1070.

Consultant acknowledges its duty to notify the Office of the City Administrator, Contracts and Compliance Unit if it's Business Entity or any of its subsidiaries, affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this agreement.

**19. Dispute Disclosure**

As referenced in Schedule K; consultants are required to disclose pending disputes with the City of Oakland when they submit bids, proposals or applications for a City or Agency contract or transaction involving professional services. This includes contract amendments. Consultant agrees to disclose, and has disclosed, any and all pending disputes to the City prior to execution of this agreement. The City will provide a form for

such disclosure upon Consultant's request. Failure to disclose pending disputes prior to execution of this amendment shall be a basis for termination of this agreement.

**20. Termination on Notice**

The City may terminate this Agreement immediately for cause or without cause upon giving (30) calendar days' written notice to Consultant.

**21. Conflict of Interest**

a. Consultant

The following protections against conflict of interest will be upheld:

- i. Consultant certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- ii. Consultant certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- iii. Consultant shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Consultant.
- iv. Consultant warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Consultant shall exercise due diligence to ensure that no such official will receive such an interest.
- v. Consultant further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Consultant to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Consultant or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment

worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year. Consultant agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

- vi. Consultant understands that in some cases Consultant or persons associated with Consultant may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Consultant further understands that, as a public officer or official, Consultant or persons associated with Consultant may be disqualified from future City contracts to the extent that Consultant is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.
- vii. Consultant shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

b. No Waiver

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Consultant understands and agrees that, if the City reasonably determines that Consultant has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Consultant to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Consultant is responsible for the conflict of interest situation.

22. **Non-Discrimination/Equal Employment Practices**

Consultant shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Consultant agrees as follows:



- a. Consultant and Consultant's subconsultants, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
  - b. Consultant and Consultant's Subconsultants shall state in all solicitations or advertisements for employees placed by or on behalf of Consultant that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
  - c. Consultant shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Schedule C-1, Declaration of Compliance with the Americans with Disabilities Act, attached hereto and incorporated herein.
  - d. If applicable, Consultant will send to each labor union or representative of workers with whom Consultant has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Consultant's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 23. Local and Small Local Business Enterprise Program (L/SLBE)**
- a. *Requirement* – For Professional Services, **50% Local and Small Local Business Enterprise Program (L/SLBE)**: there is a 50% minimum participation requirement for all professional services contracts over \$50,000. Consultant status as an Oakland certified local or small local firm and subcontractor/subconsultant status as an Oakland certified local or small local firm are taken into account in the calculation. The requirement may be satisfied by a certified prime consultant and/or subconsultant(s). A business must be certified by the City of Oakland in order to earn credit toward meeting the fifty percent requirement. The City has waived small local business enterprise (SLBE) subcontracting requirements for Oakland certified local businesses that apply for professional services contracts as the prime consultant with the City. The SLBE requirements still applies for non-certified LBEs and non-local business enterprises.
  - b. *Good Faith Effort* - In light of the fifty percent requirement, good faith effort documentation is not necessary.
  - c. *Preference Points* – Preference points are earned based on the level of participation proposed prior to the award of a contract. Upon satisfying the minimum fifty percent

requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to eighty percent participation of the total contract dollars spent with local Oakland certified firms.

- d. A firm may earn up to five (5) preference points for local Oakland business participation and additional preference points for being a long term certified business in Oakland regardless of size and for having an Oakland workforce.
- e. In those instances where VSLBE participation is evident, the level of participation will be double-counted towards meeting the requirement.
- f. Additional Preference Points. For Request for Proposal (RFP) and Request for Qualifications (RFQ), additional Preference Points may be earned for h having an Oakland workforce on Non-Construction Contracts.
- g. Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal "evaluation" process allows for additional preference points over and above the number of points earned for technical expertise. Typically 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points.
- h. The Exit Report and Affidavit (ERA) - This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Schedule F, Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the Office of the City Administrator, Contracts and Compliance Unit, along with a copy of the final progress payment application.
- i. Joint Venture and Mentor-Protégé Agreements. If a prime contractor or prime consultant is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to the Office of the City Administrator, Contracts and Compliance Unit, prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
- j. Contractor shall submit information concerning the ownership and workforce composition of Contractor's firm as well as its subcontractors and suppliers, by completing Schedule D, Ownership, Ethnicity, and Gender Questionnaire, and Schedule E, Project Consultant Team, attached and incorporated herein and made a part of this Agreement.

- k. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- l. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- m. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

#### 24. Living Wage Ordinance

If the contract amount of this Agreement is equal to or greater than \$25,000 annually, then Consultant must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service consultants (Consultants) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as Schedule N, Declaration of Compliance – Living Wage, and made part of this Agreement, and unless specific exemptions apply or a waiver is granted, the Consultant must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$11.70 with health benefits or \$13.45 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. Effective July 1<sup>st</sup> of each year, Consultant shall pay adjusted wage rates.
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.70 per hour. Consultant shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.

- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit (EIC) – To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you, including but not limited to: <http://www.irs.gov>.
- e. Consultant shall provide to all employees and to the Division of Contracts and Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Consultant shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Consultant shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Consultant shall provide a copy of said list to Contracts and Compliance Unit, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Consultant shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Consultant shall require subconsultants that provide services under or related to this Agreement to comply with the above Living Wage provisions. Consultant shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to Contracts and Compliance.

**25. Equal Benefits Ordinance**

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this

Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City consultants (Consultants) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001).

The following consultants are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a consultant's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (3) elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subconsultants of any contract or consultant

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as Schedule N-1, Equal Benefits-Declaration of Nondiscrimination.

**26. City of Oakland Campaign Contribution Limits**

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits consultants that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

If this Agreement requires Council approval, Consultant must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as Schedule O, Campaign Contributions.

**27. Nuclear Free Zone Disclosure**

Consultant represents that Consultant is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Consultant shall complete Schedule P, Nuclear Free Zone Disclosure Form, attached hereto.

**28. Political Prohibition**

Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

**29. Religious Prohibition**

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.

**30. Business Tax Certificate**

Consultant shall obtain and provide proof of a valid City business tax certificate. Said certificate must remain valid during the duration of this Agreement.

**31. Abandonment of Project**

The City may abandon or indefinitely postpone the project or the services for any or all or the project at any time. In such event, the City shall give thirty-(30)-days written notice of such abandonment. In the event of abandonment prior to completion of the final drawings, if applicable, and cost estimates, Consultant shall have the right to expend a reasonable amount of additional time to assemble work in progress for the purpose of proper filing and closing the job. Prior to expending said time, Consultant shall present to the City a complete report of said proposed job closure and its costs, and the City may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus incurred and approved by the City, together with any other charges outstanding at the time of termination, shall be payable by the City within thirty-(30) days following submission of a final statement by Consultant.

Should the project or any portion thereof be abandoned, the City shall pay the Consultant for all services performed thereto in accordance with the terms of this Agreement.

**32. Validity of Contracts**

This Agreement shall not be binding or of any force or effect until it is: i) approved by resolution of the City Council as required by the Oakland City Charter, Oakland Municipal Code Title 2.04 and Oakland City Council Rules of Procedure, ii) approved for form and legality by the Office of the City Attorney, and iii) signed by the City Administrator or his or her designee.

**33. Governing Law**

This Agreement shall be governed by the laws of the State of California.

**34. Notice**

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

CITY OF OAKLAND INFORMATION

(Name of Project Manager)  
Public Works Agency  
(address)  
Oakland, CA

CONSULTANT INFORMATION

(Name of Company)  
(Name of Project Manager)  
(address)

Any party to this Agreement may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to all other parties' ten- (10) business days before the change is effective.

**35. Entire Agreement of the Parties**

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by Consultant for the City and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

**36. Modification**

Any modification of this Agreement will be effective only if it is in a writing signed by all parties to this Agreement.

**37. Severability/Partial Invalidity**

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties

hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

**38. Time of the Essence**

Time is of the essence in the performance of this Agreement.

**39. Commencement, Completion and Close out**

It shall be the responsibility of the Consultant to coordinate and schedule the work to be performed so that commencement and completion take place in accordance with the provisions of this Agreement.

Any time extension granted to Consultant to enable Consultant to complete the work must be in writing and shall not constitute a waiver of rights the City may have under this Agreement.

Should the Consultant not complete the work by the scheduled date or by an extended date, the City shall be released from all of its obligations under this Agreement.

Within thirty (30) days of completion of the performance under this Agreement, the Consultant shall make a determination of any and all final costs due under this Agreement and shall submit a requisition for such final and complete payment (including without limitations any and all claims relating to or arising from this Agreement) to the City. Failure of the Consultant to timely submit a complete and accurate requisition for final payment shall relieve the City of any further obligations under this Agreement, including without limitation any obligation for payment of work performed or payment of claims by Consultant.

**40. Approval**

If the terms of this Agreement are acceptable to Consultant and the City, sign and date below.

SAMPLE



**41. Inconsistency**

If there is any inconsistency between the main agreement and the exhibits, the text of the main agreement shall prevail.

(Name of Consultant)

Public Works Agency

\_\_\_\_\_  
(name of person)  
(person's title)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Director

\_\_\_\_\_  
Date

Approved as to form and legality

CITY OF OAKLAND  
(a municipal corporation)

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Administrator's Office

\_\_\_\_\_  
Date

Resolution No. \_\_\_\_\_

Oakland Business License No. \_\_\_\_\_

Accounting No. \_\_\_\_\_

Oracle Expiration Date (add 6 months to contract expiration)

**SAMPLE**

**EXHIBIT A – Scope of Services**

(describe scope or attach Consultant's proposal)

SAMPLE

**EXHIBIT B – Billing Rates**

(insert billing info, or attach, or if not applicable, write N/A & explain)

SAMPLE

EXHIBIT A. SCOPE OF MANAGEMENT SERVICES (23 PAGES)

1. Management Services

1.1. Independent Contractor

1.1.1. *Independent Contractor.* Contractor is an independent contractor providing the services described in the Agreement for hire. Contractor shall provide the management, operations, and supervisory services described herein, subject to the terms and conditions of the Agreement. The services to be rendered by Contractor pursuant to the Agreement are as an independent contractor only. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the City under the Agreement. Contractor or any agent or employee of Contractor shall not have employee status with the City, nor be entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any retirement, health or other benefits that the City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in the Agreement shall be construed as creating an employment or agency relationship between the City and Contractor or any agent or employee of Contractor. Any terms in the Agreement referring to direction from the City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. The City retains the right to control the means or the method by which Contractor performs work under the Agreement.

1.1.2. *Payment of Taxes and Other Expenses.* If a local, state or federal taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under the Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). The City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for the City, upon notification of such fact by the City, Contractor shall promptly remit such amount due or arrange with the City to have the amount due withheld from future payments to Contractor under the Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment

status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of the Agreement, Contractor shall not be considered an employee of the City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in the City's financial liability so that the City's total expenses under the Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

- 1.2. *General Authority to Manage.* Subject to Sections 1.3 through 1.6 below, Contractor is hereby given general authority to manage and supervise the day-to-day operation of the Facilities and to perform the specific duties hereinafter set forth, subject to, governed by, conditioned upon, and in accordance with the terms and provisions of the Agreement.
- 1.3. *Control Retained by the City.* The City shall at all times retain the authority to exercise control over the Facilities, and Contractor shall perform the duties required to be performed by it under the Agreement in accordance with policies and directives of the City. Any terms in the Agreement referring to direction from the City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. The City retains the right to control the means or the method by which Contractor performs work under the Agreement.
- 1.4. *Access to Facilities.* The City and its duly authorized agents shall have access to the Facilities at all times for the purpose of (i) inspection, (ii) to make any repairs, additions or renovations as the City shall deem advisable, and (iii) for use by the City in case of emergency, as determined by the City in its sole discretion.
- 1.5. *Management of Additional Facilities.* The City shall have the right during the term of the Agreement to request that the Contractor add Facilities to the Contractor's inventory. Any additional Facility shall be managed in the manner described in the Agreement and the Facility Regulations. In the event that the City desires to add a new Facility, it shall send a written notice of intent to the Contractor. The Management Fee due to Contractor may be adjusted by determining the total number of parking spaces being added as a percentage of the total number of parking spaces already under management under the Agreement, and increasing the Management Fee otherwise due by an equivalent percentage. In the event that the Contractor elects not to manage the additional Facility, the City shall have the right to select another Contractor to manage the additional Facility.
- 1.6. *Phase Assumption of Facilities.* Notwithstanding any other provision of the Agreement, on the Commencement Date, Contractor shall assume management responsibilities, including all rights and liabilities under the Agreement, for those individual Facilities included in the Agreement.

## 2. COMPENSATION

### 2.1. *Management Fee and Reimbursement of Operating Expenses*

- 2.1.1. Contractor shall be paid a monthly Management Fee as specified in Section 1.D Compensation of this RFP for services performed by it under the Agreement. The Management Fee shall be subject to a cost of living increase based upon the San Francisco/Bay area CPI not to exceed 3% beginning the first month of the contract anniversary date of contract years 4 and 5 respectively. In addition, Contractor shall be paid additional incentive fees as set forth in Section 2.8, below, for meeting specified revenue goals and customer satisfaction goals. Provided Contractor is not in default under the Agreement, or an event has not occurred that, with the giving of notice or the passage of time, would constitute a default, the Management Fee shall be due and payable as set forth in Section 2.8 below. Should the Commencement Date or the Expiration Date occur on any day other than the first day of a calendar month, the Management Fee for that particular month shall be prorated based on a 30-day month.
- 2.1.2. Contractor shall be entitled to reimbursement from the City for all authorized Operating Expenses properly incurred and paid by Contractor in the performance of Contractor's duties hereunder and as specified in the City approved Budget. Such reimbursement shall be subject to Contractor's compliance with the submittal procedures set forth in the Agreement and shall be subject to all City approvals required under the Agreement. The City's obligation to reimburse Contractor for wages, salaries or benefits is limited to reimbursement for time that employees of Contractor are actually working at the Facilities for the benefit of the City. Contractor shall not be reimbursed for overhead expenses that have not been specifically set out as reimbursable expenses. All costs not identified as reimbursable expenses shall be borne by Contractor.
- 2.1.3. City shall make all payments to Contractor at the address specified in the Agreement.
- 2.2. *Labor Costs.* The City shall not be required to reimburse Contractor for wages beyond the amounts required under the collective bargaining agreement. Employees not covered by such agreements shall only receive a salary increase upon submission of a written request by Contractor and written approval by the City.
- 2.3. *Payment Does Not Imply Acceptance of Work.* The granting of any payment by the City, or the receipt thereof by Contractor, shall not imply acceptance by the City of any report required by the Agreement, nor shall such payment lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that does not conform to the requirements of the Agreement may be rejected by the City and in such case must be replaced by Contractor without delay. For purposes of the Agreement, payment includes reimbursement of Operating Expenses, the Management Fee and any Incentive Fees.

- 2.4. Late Charges. Any revenues or monies, if not deposited or transferred as specified in the Agreement, shall bear interest from the due date until deposited at the rate of the prime rate of the financial institution holding the accounts plus three percent (3%) per year or, if a higher rate is legally permissible, at the highest rate permitted under law. However, interest shall not be payable on late charges incurred by Contractor nor on any amounts on which late charges are paid by Contractor to the extent this interest would cause the total interest to be in excess of that which is permitted by law. Payment of interest shall not excuse or cure any default by Contractor. The late payment charge has been agreed upon by the City and Contractor, after negotiation, as a reasonable estimate of the additional administrative costs and detriment the City will incur as a result of any such failure by Contractor, the actual costs thereof being extremely difficult, if not impossible, to determine. The late payment charge constitutes liquidated damages to compensate the City for its damages resulting from such failure to pay and shall be paid to the City together with such unpaid amount.
- 2.5. Fees during Suspended Operations. If for any reason whatsoever any condition prevents the operation of one or more of the Facilities or any portion thereof at any time for more than thirty (30) consecutive days, the Management Fee shall be adjusted on a pro rata basis by determining the total number of parking spaces affected by the termination or suspension as a percentage of the total number of parking spaces under management under the Agreement, and reducing the Management Fee otherwise due by an equivalent percentage, commencing from the expiration of such 30-day period and continuing until the earlier of (i) date the condition affecting the Facility or Facilities has been abated and normal operations of the Facilities have resumed or (ii) the termination of the Agreement.
- 2.6. Limitations on Payment of Fees. The City's obligation for payment of Management Fees and reimbursement of Operating Expenses claimed by Contractor in the performance of the Agreement shall not exceed the amount listed in the line item in the Approved Budget for each such fee or expense identified by Contractor as the source for reimbursement under the Approved Budget. The City's obligation for payment of Management Fees and reimbursement for Operating Expenses in the aggregate shall not exceed the total Approved Budget for these items, unless pre-approved by the City in writing.

2.7. Guaranteed Maximum Costs.

The City's obligation hereunder shall not at any time exceed the maximum amount approved in the Annual Budget for the Operation and Management of Parking Facilities. Therefore:

- 2.7.1. Approval Required For Additional Funding. The City and their employees and officers are not authorized to offer or promise to Contractor additional funding for the Agreement that would exceed the maximum amount of funding provided for herein for Contractor's performance hereunder. Additional funding for the Agreement in excess of the maximum provided in the Agreement shall require lawful approval by the City Council and certification by the Controller. The City is not required to honor any offered or promised

additional funding that exceeds the maximum that has been certified by the Controller and approved by the City.

2.7.2. Payments Must Be Authorized. The Controller and City's Designee are not authorized to make payments on any contract for which funds have not been certified as available in the annual budget or by a supplemental appropriation.

2.8. Payment of Incentive Fees. Contractor may earn annual incentive fees for (1) exceeding established net parking revenue targets; and/or (2) achieving specified levels of customer service, as measured through semi-annual surveys of Facility patrons.

2.8.1. Net Income Incentive Fee. The City will pay Contractor a Net Income Incentive Fee in accordance with the requirements of this subsection. For purposes of the Net Income Incentive Fee, net revenues are defined as Gross Revenues minus all costs including, but not limited to, parking taxes, Access Card deposits, Advertising Revenues, reimbursements to the garage (booked as miscellaneous income) and approved operating expenses. The City will pay the Contractor an incentive fee at the end of each contract year for exceeding the Net Parking Income Target, as set forth below, provided the Contractor (i) does not compromise the level of customer service, safety and maintenance of the Facilities, as set forth in the Agreement, and the Facility Regulations, as determined by the City's Designee in his or her sole and absolute discretion; and (ii), has not defaulted on any of its obligations under the Agreement during the Contract Year:

The table below as an example shows the Annual Incentive Fees earned based upon the Net Income exceeding the targets, beginning with a \$1.0 million target for the first Contract Year. All numbers in this table are for illustration purposes only, except that the column labeled "% Earned" indicates the actual percentages proposed by the City.

Contract Year	Net Income	Target	Over Target	% Earned	Incentive Earned
1	\$1,150,000	\$1,000,000	\$150,000	5%	\$7,500
2	\$1,400,000	\$1,300,000	\$100,000	7%	\$7,000
3	\$1,250,000	\$1,350,000	(\$100,000)	10%	\$0
4	\$1,400,000	\$1,350,000	\$50,000	10%	\$5,000
5	\$1,500,000	\$1,375,000	\$125,000	10%	\$12,500



For each contract year that the Contractor exceeds the Net Parking Income Target, the incentive shall be calculated at a percentage of the amount of net income that exceeds the Net Parking Income Target for that contract year. These amounts are based on the Parking Rates in effect on the Commencement Date of the Agreement. In the event that the Parking Rates are increased, the Net Parking Income Target shall automatically increase by a corresponding percentage unless the City's Designee, in his or her discretion, determines that a reduced increase is warranted. The Contractor must submit a written request for the incentive within 60 days of the end of the contract year in which the fee was earned. Any incentive fee due under this paragraph shall be paid to Contractor within 45 days of receipt of the written request for the incentive fee for the Contract Year in which the fee was earned.

**2.8.2. Customer Satisfaction Incentive Fee.** Contractor may earn an additional incentive fee of \$1000 semi-annually per Facility, upon meeting the established criteria semi-annually per Facility for each Facility that receives a successful score based on the customer satisfaction survey program as described in the parking facilities RFP. The Contractor must submit a written request for the fee within 30 days after the end of the semi-annual period in which the fee was earned. Any Customer Satisfaction Incentive Fee earned under this paragraph shall be paid to Contractor within 45 days of receipt of the written request for payment.

**2.8.3.** The City's Designee, in his or her sole discretion, shall determine if all requirements have been met in order to pay the Contractor one or both of the Incentive Fees authorized by this Section for any given year.

### **3. STAFFING EMPLOYEES AND CONTRACTING**

#### **3.1. Parking Personnel**

**3.1.1.** Work under the Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with the City's reasonable requests regarding assignment of personnel, but Contractor must supervise all personnel. Contractor shall select, furnish, and employ on its own behalf such competent and qualified operating personnel necessary to operate the Facilities in an efficient and workmanlike manner.

**3.1.2.** All personnel engaged in operation of the Facilities shall be employees of Contractor or employees of vendors hired by Contractor, subject to Contractor's sole supervision, direction and control, and under no circumstances shall Contractor's employees or employees of vendors be considered employees of the City. Contractor shall comply with all applicable federal, state and local laws, ordinances and regulations pertaining to its employees.

**3.1.3.** Contractor shall staff each Facility with at least one employee during all hours of operation, unless otherwise directed by the City's Designee. The duties of such personnel

shall include but not be limited to the issuance of monthly permits, collection of parking fees from all daily users of the Facilities, and notification to monthly users of the status of their parking fee payment and to prospective monthly users of their placement on the waiting list for monthly spaces in one or more of the Facilities.

- 3.1.4. Except as otherwise provided herein, Contractor shall have the exclusive right to hire, assign, supervise, manage, discipline, suspend, terminate, layoff and otherwise discharge its employees. Contractor shall control and supervise the conduct, demeanor and appearance of its employees and shall train its employees to render a high degree of courteous and efficient service to the public. Notwithstanding the above, the City's Designee shall have the right, in his or her reasonable discretion, to request that Contractor relocate or transfer any employee from the Facility or Facilities whose presence on the site the City deems detrimental to the operation of the facility, and Contractor shall comply with such request within the time specified by the City's Designee.
- 3.1.5. Contractor shall commit adequate resources and personnel to manage and operate the Facilities. Notwithstanding the Contractor's right to hire the necessary employees to operate the Facilities, the City's Designee shall have the right to direct the Contractor to either hire additional employees or reduce the number of employees staffing the Facilities if the City's Designee reasonably determines that the Contractor is failing to operate one or more of the Facilities in an efficient and appropriate manner. The Contractor shall pay particular attention to effective and efficient operation of the Facilities so as not to cause patrons unreasonable delays in entering and exiting the Facilities.
- 3.1.6. All employees shall wear uniforms of a design and color approved by the City's Designee to present a clean and efficient image and the City's Designee reserves the right to require changes in such uniforms in his or her reasonable discretion.
- 3.1.7. Upon the City's request, Contractor shall provide evidence satisfactory to the City that Contractor has adequately provided for all legally required employment benefits.
- 3.2. **Operations Manager.** Contractor shall select, hire and appoint, subject to initial and the continuing approval of the City's Designee, an on-site Operations Manager responsible for each Facility under management, each of whom must be a highly-qualified and experienced manager of automobile parking facilities, charged with responsibility and authority by Manager to manage Facility operations. At all times when the Facilities are open for public parking and the on-site Operations Manager is not present, one on-duty and on-site employee at the Facility shall be designated the Acting Operations Manager and shall be authorized to direct any other employees to respond to emergencies, inquiries and complaints. In addition, the Operations Manager shall be competent in creating reports from the Revenue Control Equipment and other onsite parking equipment, including but not limited to, revenue reports and parking utilization reports. The Operations Manager shall have a working knowledge of the figures contained in each Monthly Report and must be able to prepare and produce specific reports

requested by the City, including graphs and tables. The duties of the Operations Manager shall be exclusively and entirely dedicated to the operations of the Facilities.

- 3.3. Maintenance Personnel and Contracting.** Contractor shall employ, or contract for, sufficient personnel to perform the routine maintenance and repair work to the Facilities in a prompt and efficient manner so as to keep the premises at all times in a first-class operating condition that is clean, safe and attractive, as specified in Exhibit A, Maintenance Standards, and Form of Maintenance Schedule. Contractor shall provide evidence acceptable to the City's Designee that any contractor engaged by Contractor to perform work on the property maintains insurance in amounts, on policies of coverage and offered by companies satisfactory to the City; including but not limited to Worker's Compensation Insurance (including Employers' Liability Insurance), general liability insurance covering personal injury and property damage, and insurance covering the use of owned, non-owned or hired vehicles and equipment.
- 3.4. Security Personnel and Contracting.** Contractor shall enter into a security agreement in a form and from a contractor or contractors acceptable to the City's Designee to provide security guards, as an allowed operating expense, to be stationed at the Facilities to protect the Facilities, Facility users, and property in the Facilities against damage, injury, theft or other loss. Contractor shall provide security guards at the Facilities as directed by the City's Designee. Guards hired to provide security at the Facilities shall not carry firearms, unless specifically approved in writing by the City's Designee. Should the City's Designee determine at any time that Contractor has not employed sufficient security guards at one or more of the Facilities; the City's Designee shall notify Contractor in writing of such deficiency. Should Contractor fail to remedy the situation within forty-eight (48) hours of such notice, the City's Designee shall have the right to contract for temporary security guards and direct such guards to work at the Facility(s) until such time Contractor has provided the City's Designee with satisfactory evidence that the Facilities will be adequately staffed with security personnel. The City's Designee shall have the right to deduct administrative costs associated in providing security from the Management Fee, Security Deposit or any other available source of funds or security.
- 3.5. Payroll and Taxation.** Contractor shall make or cause to be made all necessary payroll deductions for disability and unemployment insurance, social security, withholding taxes and other applicable taxes, and prepare, maintain and file or cause to be filed all necessary reports with respect to such taxes or deductions, and all other necessary statements and reports pertaining to labor employed in or about the Facilities. Notwithstanding Contractor's direct employment of Facility employees, all approved compensation (including fringe benefits) paid to such personnel by Contractor shall be considered Operating Expenses of the Facilities during the Term of this Management Agreement and any extensions of the Term.
- 3.6. Subcontracting and Other Parking Business Operations**
- 3.6.1. Subcontracting Must be Authorized.** Except as otherwise authorized under this Agreement, to ensure the quality of work performed on the Facilities, Contractor is prohibited from subcontracting any of its duties under the Agreement or any part of it

unless such subcontracting is first approved by City's Designee in writing. Neither party shall, on the basis of the Agreement, contract on behalf of or in the name of the other party. An agreement made by Contractor and a subcontractor that is in violation of this provision shall confer no rights on any party and shall be null and void.

**3.6.2. Notification of Other Parking Business Operations.** Contractor shall promptly notify the City's Designee in writing of any parking-related business located or operating in the City in which the Contractor has an interest or in which Contractor proposes to have an interest. Contractor shall list any parking-related business located or operating in the City in which the Contractor has an interest, as well as the nature and extent of that interest, as of the date of the Management Agreement. The City reserves the right to terminate the Management Agreement at no additional cost to the City if the City determines that the Contractor's interests in other parking business operations are not in the best interests of the City. For purposes of this paragraph, a reportable interest shall be any ownership interest of 5% or greater.

#### **4. FISCAL DUTIES AND MATTERS**

##### **4.1. Taxes, Assessments, Licenses, Permit Fees and Liens**

**4.1.1.** Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of the Agreement, or the services delivered pursuant to the Agreement, shall be the obligation of Contractor. Contractor shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Land or the Facilities or Contractor's personal property. Contractor shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency.

**4.1.2.** Contractor recognizes and understands that the Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

**4.1.2.1.** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

**4.1.2.2.** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of the Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by the Agreement. Contractor accordingly agrees on behalf of itself and its permitted

successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code, as amended from time to time, and any successor provision.

4.1.2.3. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by Law.

4.1.2.4. Contractor further agrees to provide such other information as may be requested by the City to enable the City or the County to comply with any reporting requirements for possessory interests that are imposed by applicable law.

#### 4.2. Audit and Inspection of Books and Records

4.2.1. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under the Agreement. Contractor will permit the City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by the Agreement, whether funded in whole or in part under the Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under the Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of the Agreement shall have the same rights conferred upon the City by this Section.

4.2.2. The Contractor shall cooperate in audits of its books and records relating to the Facilities and the Contractor's compliance with the Agreement. The audits shall be conducted at the direction of the City or the City Auditor by an auditor selected by the City or the City Auditor. The City or the City Auditor shall determine the scope of said audit(s), which may include but are not limited to the Contractor's compliance with the terms of the Agreement and the Facility Regulations, determining the amount of Gross Revenues and Parking Taxes received by the Contractor from the operation of the Facilities; the Gross Revenues and Parking Taxes deposited into the Revenue Account; any differences between the Gross Revenues and Parking Taxes reported and the Revenue Account deposits and audited revenues; and the form and method of the Contractor's record keeping. The audits may include review of capital expenditures, compliance with any provisions of the Agreement and the Facility Regulations or any other item related to administration of the Agreement or the financial stability of Contractor at the discretion of the City.

4.2.3. Contractor shall establish and maintain at each Facility books, records and systems of account, including all records relating to Revenue Control Equipment at the Facilities in accordance with generally accepted accounting principles, consistently applied reflecting all business operations of Contractor transacted under the Agreement. To the extent Contractor has not complied with generally accepted accounting principles, the City's Designee may require Contractor to restate its books, records and systems of account to conform to such requirements. These books, records and systems of account shall be retained by Contractor during the term of the Agreement and for at least five (5) years thereafter, and shall be available at all reasonable times, with or without notice, for inspection and audit by the City, the City Auditor, or their agents. Upon expiration or early termination of the Agreement, all such books, records and systems of account shall be delivered to the City's Designee. All used and unused parking tickets, tapes and other records used in the operation of the Facilities are owned by the City, but shall be retained by Contractor at the Facilities unless the City's Designee request otherwise. Such tickets, tapes and records shall be available at all reasonable times, with or without notice, for inspection and audit by either the City's Designee or his/her agents, and shall not be destroyed without prior written consent from the City's Designee.

## 5. HAZARDOUS MATERIALS COVENANTS

5.1. *No Hazardous Materials.* Contractor covenants and agrees that neither Contractor nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Facilities or the Land or transported to or from the Land or the Facilities, provided that Contractor may store and use such substances in the Facilities and on the Land in such limited amounts as are customarily used in a parking Facility so long as such storage and use is at all times in full compliance with all applicable Environmental Laws. Contractor shall immediately notify the City if and when Contractor learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Land or the Facilities. The City may request Contractor to provide information required for the City to determine whether any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Contractor shall promptly provide all such information.

5.2. *Contractor's Environmental Indemnity.* If Contractor breaches any of its obligations contained in Section 5.1 above, or, if any act or omission or negligence of Contractor or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Land or the Facilities (including any Improvements thereon) or any other City property, without limiting Contractor's general Indemnity, Contractor, on behalf of itself and its successors and assigns, shall Indemnify the City and their respective officers, agents and employees, and each of them, from and against all Hazardous Materials Claims arising during or after the termination or expiration of the Agreement and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Facilities and the Land or any other City property to its

prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and re-vegetation of the Land or other City property. Without limiting the foregoing, if Contractor or any of Contractor's Agents or Invitees causes or permits the Release of any.

Hazardous Materials in, on, under or about the Land, Facilities or any other City property, Contractor shall, immediately, at no expense to the City, take any and all appropriate actions to return the Land, Facilities or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Contractor shall provide the City with written notice of and afford the City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material. Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is groundless, fraudulent or false, and at all times before the determination of the validity of any such claim. The foregoing indemnity is not limited by the amount of insurance required to be maintained by Contractor.

## **6. INSURANCE AND SURETY BONDS**

**6.1. Required Insurance.** Contractor will secure and maintain the Required Insurance for Facilities as set forth in the Agreement. All costs under this Section 6 shall be Operating Expenses. If directed by the City and subject to approval by the City of the insurers and policy forms, Contractor shall arrange and maintain throughout the term of the Agreement the following insurance policies and any additional insurance as may be required:

**6.1.1. Property insurance** on an all-risk form, excluding earthquake and flood, but including sprinkler leakage, in the amount of one hundred percent (100%) of the replacement value of buildings, equipment and contents which value is estimated at one hundred seventy nine million dollars (\$126,207,000) (assuming a replacement cost of \$37,000 per garage parking stall). Said policy shall also insure against business interruption, including coverage for the City, in an amount not less than one hundred percent (100%) of Gross Revenues for six (6) months. The City's liability to reimburse Contractor for payment of any deductible under such policy shall not exceed \$10,000 for each Occurrence. The policy shall contain a standard replacement cost endorsement providing for full replacement and no deduction for depreciation and a stipulated amount endorsement. Upon request by the City, Contractor shall obtain earthquake coverage under such property insurance policy, the cost thereof to be an Operating Expense.

**6.1.2. Commercial general liability insurance** with limits not less than \$5,000,000 each occurrence, combined single limit for bodily injury and property damage, or in such greater amount and limits as the City may reasonably require, including coverage for contractual liability, personal injury, broad form property damage, products and completed

operations. Such policy shall include endorsements for (1) false arrest, detention or imprisonment or malicious prosecution; (2) libel, slander or defamation of character; (3) wrongful entry or eviction or invasion of the right of privacy. Any deductible under such insurance shall not exceed \$10,000 for each Occurrence.

**6.1.3.** Business automobile liability insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable. The City's liability to reimburse Contractor for payment of any deductible under such policy shall not exceed \$10,000 for each Occurrence.

**6.1.4.** Facility-keeper's legal liability insurance with limits not less than \$1,000,000 for each occurrence combined single limit for loss and damage to vehicles in Contractor's care, custody or control caused by fire, explosion, theft, riot, civil commotion, malicious mischief, vandalism or collision. Any deductible under any such policy shall not to exceed \$1,000 for each occurrence. Any insurance deductible for non-automobile (personal) property customarily left in the custody of the Facilities shall not exceed \$5,000.

**6.1.5.** Workers' Compensation Insurance, including Employers' Liability, with limits not less than \$1,000,000 for each accident, covering all employees employed in or about the Facilities to provide statutory benefits as required by the laws of the State of California. If Contractor carries a policy for employees at the Facilities separate from its other employees, the City's liability to reimburse Contractor for its workers' compensation insurance premium is limited to average cost of workers' compensation insurance per employee for all of Contractor's employees. If Contractor maintains a single workers' compensation insurance policy for all of its employees, irrespective of work site assignment, then the City's liability to reimburse Contractor shall be limited to the actual cost to Contractor for the employees assigned to the Facilities. Said amount shall be calculated by dividing the cost of the annual premium by the number of Contractor's employees and then multiplying that result by the number of Contractor's employees assigned to work at the Facilities.

## **6.2. Additional Requirements.**

**6.2.1.** Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of the Agreement and, without lapse, for a period of three (3) years beyond the Management Agreement expiration, to the effect that, should occurrences during the Management Agreement term give rise to claims-made after expiration of the Management Agreement, such claims shall be covered by such claims-made policies.

**6.2.2.** Should any of the required insurance be provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.



- 6.2.3. All liability insurance policies required pursuant to Section 6.1(a) through (e) shall be endorsed to provide the following: These policies shall list the Contractor as the named insured and shall be further endorsed to name as additional insured the City of Oakland and its officers, agents and employees. That such policies are primary insurance to any other insurance available to the additional insured, with respect to any claims arising out of the Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act of omission of one of the named insured which would void or otherwise reduce coverage shall not reduce or void the coverage as to any other insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.
- 6.2.4. All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation, non-renewal or reduction in coverage, mailed to the address/es for the City set forth in the Agreement.
- 6.2.5. Contractor shall deliver to the City certificates of insurance in form and from insurers satisfactory to the City, evidencing the coverage required hereunder, on or before the expiration date of current policies, together with copies of the policies promptly upon the City's request, and Contractor shall provide the City with certificates or policies thereafter at least 30 days before the expiration dates of expiring policies. In the event Contractor fails to procure such insurance, or to deliver such policies or certificates, the City may (without limiting any other rights or remedies hereunder) procure, at its option, such insurance for the account of Contractor, and the cost thereof shall be paid to the City within five days after delivery to Contractor of invoices as a Contractor's Cost.
- 6.2.6. Upon the City's or City's Designee's request, Contractor and the City may periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City of Oakland is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Contractor for risks comparable to those associated with the Premises, then Contractor shall, at the City's or City's Designee's request, increase the amounts or coverage carried by Contractor to conform to such general commercial practice.
- 6.3. *Compliance with Insurance Requirements.* Contractor shall not do anything, or permit anything to be done, in or about the Premises that would be prohibited by or increase the rates under a standard form fire insurance policy or subject the City to potential premises liability. Contractor shall faithfully observe, at its expense, any and all requirements of City's Risk Manager with respect to Contractor's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with the Contractor's use of said premises or are otherwise connected with standard prudent commercial practices of other landlords.
- 6.4. *Required Bonds.* Within 30 days of mutual execution of the Agreement, subject to approval by the City of the surety companies and bond forms, Contractor shall deposit with the City and

shall maintain throughout the term of the Agreement, and pay the cost thereof as an Operating Expense, the following bonds made payable to the City and naming the City as obligee:

- 6.4.1. Blanket fidelity bond covering all officers and employees of Contractor employed at the Facilities or who have access to the Facility revenues or funds, no less than \_\_\_\_\_ Thousand Dollars (\$ XXXX ). Alternatively, the Contractor may fulfill the fidelity bond obligation by providing a crime policy with coverage no less than \_\_\_\_\_ Thousand Dollars (\$ XXXX).
- 6.4.2. Faithful performance surety bond in the amount of \_\_\_\_\_ Thousand Dollars (\$ XXXXX) guaranteeing the faithful performance by Contractor during the term of the Agreement of the covenants, terms and conditions of the Agreement.

## 7. INDEMNIFICATION AND HOLD HARMLESS

- 7.1. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all Losses, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of the Agreement, including but not limited to Contractor's use, occupancy, or condition of the Facilities or of other facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of the Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. The foregoing indemnity is not limited by the amount of insurance required to be maintained by Contractor. The provisions of this Section shall survive the termination of the Agreement with respect to any Loss occurring prior to or upon termination.
- 7.2. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within these indemnification provisions, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.
- 7.3. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any

of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

- 7.4. In the event that any action or proceeding is brought against the City by reason of a claim arising out of any Loss suffered on or about the Facilities, and upon written notice from the City, Contractor shall, at its sole expense, answer and otherwise defend such action or proceeding using counsel approved in writing by the City. The City shall have the right, exercised in its sole discretion but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the City in connection with the Facilities.

## **8. DAMAGE OR DESTRUCTION**

- 8.1. *Partial Destruction or Damage.* If one or more of the Facilities are partially destroyed or damaged, the City shall determine, in its sole and absolute discretion, whether it wishes to continue to operate the Facilities. Should the City elect to continue the operation of the Facilities, the City will proceed with the reconstruction of the damaged portion of the Facilities. To the extent insurance proceeds are received from the insurance policies required to be maintained by Contractor, Contractor shall transfer such amounts to the City. If the City does not elect to continue the operation of the Facilities, the Agreement shall terminate with respect to those Facilities upon written notice thereof from the City's Designee.
- 8.2. *Management Agreement during Reconstruction.* In the event that the City elects to reconstruct the damaged portions of the Facilities, the City will make a determination as to whether the Facilities will continue to operate during the reconstruction period. If the City determines that the Facilities will operate during such time, the Agreement shall remain in full force and effect; provided, however, the Management Fee may be adjusted in accordance with Subsection 8.5 below. If the City determines that the Facilities cannot continue to operate during all or part of the reconstruction period, the City shall suspend the Agreement with respect to the damaged Facilities during such period of inoperability without altering the Expiration Date.
- 8.3. *Total Destruction.* If one or more of the Facilities are totally destroyed from any cause, whether or not covered by the insurance required hereunder, the Agreement shall automatically terminate as of the date of such total destruction with respect to those Facilities.
- 8.4. *Damage near End of Term.* If one or more of the Facilities are partially destroyed during the last twelve (12) months of the term of the Agreement from any cause, whether or not covered by the insurance required hereunder, the City may, at its option, terminate the Agreement in its entirety or with respect to the damaged Facilities by giving written notice thereof to Contractor.
- 8.5. *Adjustment of Management Fee.* Where operation of one or more of the Facilities is terminated or suspended in accordance with subsections 8.1-8.4, the Management Fee due to Contractor may be adjusted by determining the total number of parking spaces affected by the termination or suspension as a percentage of the total number of parking spaces under management under

the Agreement, and reducing the Management Fee otherwise due by an equivalent percentage. Such fee shall be reinstated to the extent that spaces are returned to service.

## **9. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

Contractor hereby represents and warrants as follows:

- 9.1. Experience.** Contractor is experienced in the operation and management of public parking facilities and hereby agrees to apply its best efforts and most efficient methods in the operations and management of the Facilities.
- 9.2. Formation.** Contractor is duly formed or incorporated, is validly existing and in good standing under the laws of the State of California, and qualified to do business in the State of California.
- 9.3. Authority.** Contractor has full power and authority (corporate or otherwise) to enter into the Agreement and to consummate the transactions contemplated by it, the Agreement has been duly authorized by all necessary action on the part of Contractor, and no other corporate or other action on the part of Contractor is necessary to authorize the execution and delivery of the Agreement.
- 9.4. Conflicts and Consents.** The execution and delivery by Contractor of the Agreement and the performance by Contractor of the transactions contemplated by it will not violate any federal, state or local law, rule or regulation, or conflict with or result in any breach or violation of, or constitute a default under the Articles of Incorporation, Bylaws or partnership agreement of Contractor (as applicable) or any indenture, mortgage, lease, agreement or other instrument or obligation to which Contractor is a party or by which it may be bound which would materially adversely affect the ability of Contractor to perform its obligations under this Agreement. No approval, authorization, consent or other order or action of, or filing or registration with, any person, entity or governmental authority is required for the execution and delivery by Contractor of the Agreement.
- 9.5. No Conflict with Orders, Judgments or Decree.** The execution and delivery by Contractor of the Agreement will not conflict with any order, judgment or decree of any court, government, government agency or instrumentality, whether entered pursuant to consent or otherwise, by which Contractor may be bound or affected.
- 9.6. Litigation.** Contractor warrants that it is not involved in any actual litigation, action, arbitration, grievance, administrative proceeding, suit or claim or investigation by a governmental agency and it is not aware of any imminent or pending litigation, action, arbitration, grievance, administrative proceeding or investigation by a governmental agency against Contractor or its affiliates that, if adversely decided, could have a material adverse impact on Contractor's ability to perform its obligations under the Agreement.
- 9.7. No False Statements.** No document furnished or to be furnished by Contractor to the City in connection with the Agreement, any funding request or any other document relating to any of

the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

**9.8. No Other Agreements.** Except as may be permitted hereunder and approved by City, Contractor has not entered into any agreement, arrangement or understanding with any other person or entity pursuant to which such person or entity will implement or assist in implementing all or any portion of the work and services Contractor is to provide City under the Agreement.

**9.9. No Suspension or Debarment.** Neither Contractor nor any of its members or officers have been suspended, debarred or prohibited from contracting with any federal, state or local governmental agency. In the event of any such suspension, debarment or prohibition, Contractor shall immediately notify the City and City's Designee of same and the reasons therefore together with any relevant facts or information requested by the City and City's Designee. Any such suspension, debarment, or prohibition may result in the termination of the Agreement.

#### **10. EVENTS OF DEFAULT; REMEDIES**

**10.1. Events of Default.** Each of the following events shall constitute an "Event of Default" by Contractor upon which the City may terminate the Agreement:

**10.1.1. Material Provisions.** In the sole discretion of the City, Contractor fails or refuses to perform or observe any term, covenant or condition contained in the Agreement, or Contractor fails or refuses to perform or observe any term, covenant or condition contained in any Sections of the Agreement;

**10.1.2. Deposit of Revenues and Taxes.** Contractor fails to deposit any and all revenues or taxes into the appropriate account, as required under the Agreement within the times prescribed; and such failure continues for a period of one (1) Banking Day after oral or written notice thereof from the City; provided, Contractor shall be entitled to such notice on only two (2) occasions, and thereafter any failure to so deposit revenues or taxes shall be an immediate event of default without the need for notice.

**10.1.3. Monthly Statement.** Contractor fails to provide to the City and the Oakland Tax Collector a full and accurate monthly statement containing all Parking Taxes due and payable; and such failure continues for a period of five (5) days after written notice thereof from the City's Designee; provided, Contractor shall be entitled to such notice on only two (2) occasions, and thereafter any failure to so provide the monthly statement shall be an immediate event of default without the need for notice.

**10.1.4. Operating Expenses.** Contractor fails to pay any and all Operating Expenses on a timely basis; and such failure continues for ten (10) days after written notice thereof from the City; provided, Contractor shall be entitled to such notice on only two (2) occasions in

any Contract Year, and thereafter any failure to so pay any Operating Expense in such Contract Year shall be an immediate event of default without the need for notice.

**10.1.5. Monthly Reports.** Contractor fails to submit a full, accurate and certified Monthly Report as required by the Agreement when due; and such failure continues for five (5) days after written notice thereof from the City; provided, Contractor shall be entitled to such notice on only two (2) occasions in any Contract Year, and thereafter any failure to so submit a Monthly Report shall be an immediate event of default without the need for notice.

**10.1.6. Failure to Open Facilities.** Contractor fails to open and keep Facilities open during the hours prescribed by the City's Designee.

**10.1.7. Failure to Cure Breach.** Contractor fails to comply with any other term, covenant or condition of the Agreement; and such failure continues for a period of 10 days after written notice thereof from the City; provided, Contractor shall be entitled to such notice on only two (2) occasions in any Contract Year with respect to a particular failure, and thereafter any additional occurrence of the particular failure in such Contract Year shall be an immediate event of default without the need for further notice.

**10.1.8. Representations and Warranties.** Any representation or warranty made by Contractor in the Agreement is found to have been untrue, incorrect or materially misleading as of the effective date hereof

**10.1.9. Other Agreement and Obligations.** Contractor fails to pay when due any amount owing from Contractor to the City or any of its agencies, commissions or departments, including, without limitation, rents, taxes, fees or other charges, whether or not such amounts are related to the operation of the Facilities, and such failure continues for a period of ten (10) days after written or oral notice from the City; provided, Contractor shall be entitled to such notice on only two (2) occasions in any Contract Year, and thereafter any failure to so in such Contract Year shall be an immediate event of default without the need for notice. The failure of the City to insist upon the strict performance of any of the terms, conditions, covenants, or provisions herein contained shall not be deemed a waiver of any subsequent breach or default of the terms, conditions, covenants and provisions in the Agreement.

## **10.2. Remedies.**

**10.2.1.** On and after any Event of Default by Contractor, the City shall have the right to exercise all legal and equitable remedies including, without limitation, the right to terminate the Agreement or seek specific performance of all or parts of this Agreement. If Contractor fails after reasonable notice from the City to perform any of its obligations under the Agreement, as determined by the City in its sole discretion, the City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in

effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under the Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of the Agreement or any other agreement.

- 10.2.2.** All remedies provided for in the Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.
- 10.3.** *Incidental and Consequential Damages.* Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in the Agreement shall constitute a waiver or limitation of any rights that the City may have under applicable Law.
- 10.4.** *Liability of the City.* The City's payment obligations under the Agreement shall be limited to the payment of the compensation provided for in the Agreement. Notwithstanding any other provision in the Agreement, in no event shall the City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, without limitation, lost profits, arising out of or in connection with the Agreement or the services performed in connection with the Agreement.
- 10.5.** *Litigation Expenses.* If either Party hereto or their respective officers or agents, brings an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against another Party by reason of a default under this Agreement, or otherwise arising out of the Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including, but not limited to, reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section shall include, without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action. Attorneys' fees under this Section shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. For purposes of the Agreement, reasonable fees of the attorneys of the City shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the services were rendered if the City uses its own attorneys. Contractor shall not be reimbursed for its litigation expenses as an Operating Expense where such expenses are incurred in a dispute in which the City is a party.
- 10.6.** *Responsibility for Equipment.* The City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by

any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

- 10.7. *Liquidated Damages.* By entering into the Agreement, Contractor agrees that in any instance where the Agreement imposes a charge upon Contractor for failure to perform any of duties or responsibilities set forth in the Agreement, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sums set forth as the damages in the Agreement are not a penalty, but are a reasonable estimate of the loss the City will incur due to Contractor's failure to perform its duties in accordance with the Agreement based on the circumstances existing at the time this contract was awarded. The City may deduct a sum representing the liquidated damages from any payments due to Contractor.

## **11. RIGHT OF TERMINATION**

### **11.1. Termination for Convenience.**

- 11.1.1. The City's Designee, with the authorization of the City Administrator, shall have the right to terminate the Agreement, without cause, by providing at least thirty (30) days prior written notice to the Contractor of its election to terminate. Such termination may be in full, terminating the Agreement with respect to all Facilities, or partial, terminating the Agreement as it applies to one or more Facilities. Termination shall be effective upon the expiration of the 30-day notice period or at such later date as is specified in the notice.
- 11.1.2. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the full or partial termination of the Agreement on the date specified by the City's Designee and to minimize the liability of Contractor and the City to third parties as a result of termination. All such actions shall be subject to the prior approval of the City's Designee. For the affected Facilities, such actions shall include, without limitation:
- 11.1.2.1. Halting the performance of all services and other work under the Agreement on the date(s) and in the manner specified by City.
- 11.1.2.2. Not placing any further orders or subcontracts for materials, services, equipment or other items.
- 11.1.2.3. Terminating all existing orders and subcontracts.
- 11.1.2.4. At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.



- 11.1.2.5. Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- 11.1.2.6. Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- 11.1.2.7. Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to the Agreement which is in the possession of Contractor and in which City has or may acquire an interest.
- 11.1.3. Within thirty (30) days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth the reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already reimbursed Contractor.
- 11.1.4. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).
- 11.1.5. In arriving at the amount due to Contractor under this Section, City may deduct:
  1. all payments previously made by City for work or other services covered by Contractor's final invoice;
  2. (any claim which City may have against Contractor in connection with the Agreement;
  3. any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (11.1.4);
  4. in instances in which, in the opinion of the City, the cost of any service or other work performed under the Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of the Agreement.
- 11.1.6. City's payment obligation under this Section shall survive termination of the Agreement.
- 11.2. *Termination for Cause.* The City's Designee, with the authorization of the City Administrator, by written notice to Contractor, shall have the right to terminate the Agreement upon the

occurrence of any event of default. Termination under this section shall be effective immediately upon notice being given by the City to Contractor. Upon such termination, all rights, powers, privileges and authority granted to Contractor under the Agreement shall cease, and Contractor shall immediately thereupon vacate the Facility premises. The City's right to terminate the Agreement under this section is not its exclusive remedy but is an addition to all other remedies provided to it by Law or the provisions of the Agreement.

## **12. DUTIES UPON TERMINATION AND EXPIRATION**

**12.1. Duties upon Termination and Expiration.** On or before the last day prior to the termination or expiration of the Agreement, the City and Contractor shall cause an inspection of the Facilities to occur as required by the Facility Regulations. Upon satisfactory completion of such inspection, the amounts remaining in the Security Deposit, if any, shall be disbursed to Contractor as such procedure is prescribed in the Agreement and the Parties shall pay all other amounts due to each other hereunder. Finally, Contractor shall deliver to the City the originals of all books, permits, plans, records, licenses, contracts, unused tickets and other documents pertaining to the terminated Facilities and their operation, any insurance policies, bills of sale or other documents evidencing title or rights of the City, and any and all other records or documents pertaining to the terminated Facilities, whether or not enumerated herein, which are requested by the City or necessary or desirable for the ownership and operation of the Facilities, which are in Contractor's possession. Contractor further agrees to do all other things reasonably necessary to cause an orderly transition of the management and operation of the Facilities without detriment to the rights of the City or to the continued management of the Facilities.

**12.2. Delivery of Work.** Subject to the immediately preceding Section 12.1, upon termination or expiration of the Agreement Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of the Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of the Agreement.

EXHIBIT B. MAINTENANCE STANDARDS (2 PAGES)

The goal of the City is to provide the public, at all times, safe, clean, sanitary, well lighted, and efficient Facilities. The following maintenance standards are designed to achieve this goal:

1. *Lighting.* Following industry standards (including the Illuminating Engineers Society RP20 "Lighting for Public Facilities"), all lights must be in working order and bright enough to convey a sense of safety, especially in and around stairways and restrooms. Burned out bulbs or lamps must be replaced within 24 hours. Non-working fixtures must be repaired or replaced, with energy efficient fixtures within 72 hours. Bulbs or lamps must be secured and must be the same color. Emergency lights must be inspected at least once each month and non-operating battery packs must be changed within one week.
2. *Walls & Fences.* All walls must be kept clean and free of stains, dirt and graffiti. Special attention shall be given to restrooms and their surrounding areas. Graffiti must be removed or painted over within 48 hours. Black marks from bumpers must be painted over as needed but, in no event, not less than once a month.
3. *Odors.* Foul odors must be removed within 24 hours. Special attention shall be given to walkways, restrooms and their surrounding areas. Stairwells and sidewalks must be steam cleaned as needed but, in no event, not less than once a month.
4. *Cleaning.* The entire facility must be cleaned daily, including interior and exterior walkways, restrooms, parking areas, and sidewalks. Parking areas and Facility floors must be swept, grease and oil must be removed, foul odors must be deodorized, bird droppings and all litter must be removed regularly, but in no event, not less than once a week.
5. *Steam Cleaning.* Steam cleaning of each Facility in its entirety shall be performed on a semi-annual basis. At the discretion of the City's Designee, steam cleaning may be required to be performed less frequently if the Facilities, including interior walkways, are maintained in a clean and orderly state.
6. *Ventilation Equipment (if applicable).* Thorough cleaning of all ventilation system supply and exhaust vents shall be performed on a semi-annual basis.
7. *Windows (where applicable).* All windows, mirrors and glass cases must be cleaned as needed, but in no event not less than once a month. All windows visible to the public must be inspected daily and cleaned as needed.
8. *Signs.* Signs must be easily read and understood and professionally made, not hand printed or copy machine reproduced. Contractor will be allowed to post nonprofessional signs only in case of an emergency, but the emergency signs must be replaced within one week. Signs must also be repaired or replaced promptly when damaged.

9. *Plants.* Landscaping at each garage, and the Contractor's requirements for care, shall be outlined for every Facility. Selection of plants, etc. requires approval of the City.
10. *Safety Equipment.* Equipment including fire alarm call boxes, fire extinguishers, and fire hose units must be maintained in good working order and inspected at least once a month. Closed circuit cameras and the intercom system where applicable must be inspected at least once a week.
11. *Structural Inspections.* Structural inspections including water leaks, exposed rebar, concrete cracks and metal rust must be performed not less than once a year and reported to the City's Designee in a written report.
12. *Sidewalk Inspections.* Inspections of the sidewalks abutting the Facilities for the presence of any sidewalk tripping hazards, including tree planting areas not at sidewalk grade, must be performed once a month. In the event any hazards are observed, such hazards shall be reported immediately to the City's Designee.
13. *Other Work.* All other ordinary maintenance and repair work of the premises and equipment shall be done as needed with prior approval by the City.
14. *Instructions.* The City reserves the right to instruct the Contractor to clean or repair any item which falls under the category of routine maintenance and repair.

If the maintenance standards are not followed, the City may give written notice and the work must be completed within 72 hours thereafter. Nonperformance may result in the City causing such work to be done at the expense of the Contractor. Repeated instances of nonperformance will result in the Contractor being deemed ineligible to submit proposals on future Management Agreements.

EXHIBIT C. MAINTENANCE SCHEDULE (3 PAGES)

(Parking Facility Name): \_\_\_\_\_ Year: \_\_\_\_\_

	Daily	Weekly	Monthly	Quarterly	Semi-Annually	Annually
<b>LIGHTS</b>						
Inspect lights	X					
Replace burnt-out bulbs	X					
Inspect broken fixtures	X					
Replace discolored covers	X					
<b>CLEANING</b>						
Elevator areas	X					
Stairwell areas	X					
Bathroom & lobbies	X					
Parking areas	X					
Pick-up litter	X					
Cashier booths/stations	X					
Windows	X					
Steam-clean stairwells			X			

	Daily	Weekly	Monthly	Quarterly	Semi-Annually	Annually
Ventilation Vents				X		
Steam-clean Garage					X	
<b>PAINTING</b>						
Paint over graffiti	X					
Paint over foreign marks		X				
Touch-up				X		
Inspect striping				X		
<b>ELEVATORS (IF APPLICABLE)</b>						
Inspect elevator operations	X					
Professional Periodic Maintenance					X	
Professional inspection						X
<b>LANDSCAPING</b>						
Inspect Irrigation System				X		
Remove Weeds		X				
Prune trees and plants					X	
<b>SIGNS</b>						
Inspect signs	X					

	Daily	Weekly	Monthly	Quarterly	Semi-Annually	Annually
Repair/replace damaged signs		X				
<b>MECHANICAL</b>						
Doors open and lock properly	X					
Inspect parking equipment	X					
Inspect HVAC operations				X		
<b>SAFETY</b>						
Inspect emergency lights	X					
Inspect exit lights	X					
Inspect sidewalks	X					
Inspect fire alarm/equipment	X					
Inspect/service closed circuit camera system				X		
<b>STRUCTURAL</b>						
Inspect for water leaks		X				
Inspect floors for exposed rebar				X		
Inspect concrete for cracks				X		

EXHIBIT D. PARKING FACILITY OPERATION AND MANAGEMENT REGULATIONS (19 PAGES)

1. DEFINITIONS

For purposes of these Regulations and any Facility Management Agreements between a Contractor and the City subject to these Regulations, initially capitalized terms shall have the meaning ascribed to them in this Section unless otherwise specified.

- 1.1. "Access Card Deposit" means the deposit for each access card (electronic key card used to access a Facility) issued to monthly users, as set forth in these Regulations.
- 1.2. "Advertising Revenue" means all revenue generated by the Advertising Contract that shall be excluded from Gross Revenues for the purpose of calculating incentive fees.
- 1.3. "After Hours Opening Fee" means the fee charged by a Contractor to a vehicle owner to retrieve a vehicle from a Facility after the Facility has closed.
- 1.4. "Agents" means the officers, City's Designees, employees, agents, contractors, licensees and subtenants of a referenced Party, and their respective heirs, legal representatives, successors and assigns.
- 1.5. "Agreement" or "Management Agreement" means an agreement under which a contractor agrees to operate and manage any Facility under the jurisdiction of the City of Oakland or the Transportation Services Division.
- 1.6. "Banking Day" means any day which is not a Saturday or Sunday or a day on which banking institutions are authorized or required by law or by the Federal Reserve System to be closed in Oakland, California for commercial banking purposes.
- 1.7. "Budget" (also "Approved Budget") means the itemized annual projection of individual Facility gross revenues, authorized capital expenditures and authorized operating expenses prepared by Contractor and requiring approval by the City's Designee as set forth in these Parking Facility Regulations.
- 1.8. "City" means the City of Oakland, and its departments and agencies, and officers and employees.
- 1.9. "Controller" means the Controller of the City.
- 1.10. "City's Designee" means the City's Designee of the Transportation Services Division or his/her designee.
- 1.11. "Environmental Laws" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or



environmental conditions in, on, under or about the Facilities, the Land or any other property, including, without limitation, soil, air and groundwater conditions.

- 1.12. "Facility" means the land and all improvements of the City-owned off-street parking garages and lots listed in the Agreement.
- 1.13. "Facility Regulations" means these Parking Facility Operation and Management Regulations promulgated by the City, as amended from time to time.
- 1.14. "Fiscal Year" means the period beginning July 1<sup>st</sup> of a year and ending June 30<sup>th</sup> of the following year.
- 1.15. "Gross Revenues" means all revenues, from whatever source, but excluding Advertising Revenues generated by the City's Advertising Contract, received by a Contractor or any subcontractor or vendor, from the operation of any Facility and from any income-generating activity carried on therein, including, but not limited to, the following: (1) revenues received from the operation of the Facility for daily and monthly parking of vehicles therein; (2) revenue paid to a Contractor in connection with any ancillary services provided at or in connection with any Facility as may be approved by the City's Designee under Section 3.1 of these Facility Regulations; (3) the selling price of all merchandise or services sold or otherwise provided for exchange in, on, or about the Facility in the ordinary course of business by Contractor except any returned merchandise; (4) all charges or claims of credit of any character made by Contractor or a vendor under contract to Contractor or otherwise under Contractor's control for the rendering of any service or work of any kind conducted in, on, about or from the Facilities; (5) the gross amount of all deposits forfeited by Facility customers and retained or received by Contractor in connection with the operation of the Facilities, including all Access Card Deposits collected, all after-hour Facility opening fees, all valet no-key charges, and all refundable deposits subsequently returned to the depositor; (6) all interest or investment earnings received from the Gross Revenues deposited in the Revenue Account; (7) commercial rents and fees collected for display and storage rental, and/or other commercial uses approved in accordance with Section 3.1 of these Facility Regulations; (8) the value of any in-kind services received by the Contractor in exchange for a benefit derived from the use of the Facilities; and (9) the amount of all Parking Taxes payable from the operation of the Facilities.
- 1.16. "Hazardous Material" means any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA," also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act, as amended, (Cal. Health & Safety Code Section 25300 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to

Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Land, any improvements to be constructed on the Land by or on behalf of Contractor or the City, or are naturally occurring substances on, in or about the Land; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

- 1.17. "Hazardous Material Claims" means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against the City, its Agents, or the Land, the Facilities or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Land, the Facilities or any Improvements, the loss or restriction of the use or any amenity of the Land, the Facilities or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.
- 1.18. "Holiday" means those days on which the following holidays are celebrated in California: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- 1.19. "Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under, or about the Land, the Facilities and any other improvements or any portion thereof or which have been, are being, or threaten to be released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Land, the Facilities or any other improvements.
- 1.20. "Invitees" means the clients, customers, and invitees to the Facilities.
- 1.21. "Land" means the land on which the Facilities are located.
- 1.22. "Law" means any law, statute, ordinance, resolution, regulation (including these Facility Regulations), proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Facilities, the Land, Contractor's operations or employees or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.
- 1.23. "Losses" means any and all claims, demands, losses, damages, liens, liabilities, penalties, fines, lawsuits and other proceedings, judgments and awards rendered therein, and costs and expenses including but not limited to reasonable attorneys' fees and costs arising from any injury to or death of any person (including employees of Contractor) or damage to or

destruction of any property (including the Facilities) occurring in, on or about the Facility premises, or any part thereof, from any cause whatsoever.

- 1.24. "Management Fee" means the amount set forth in the Agreement as compensation for operation and management of Facilities.
- 1.25. "Contractor" for purposes of these Regulations means any entity that is party to the Agreement with the City for the management of one or more Facilities.
- 1.26. "Monthly Report" shall have the meaning given such term in Section 6.7 of these Facility Regulations.
- 1.27. "Occurrence" means an accident, theft, damage or other event of loss giving rise to a claim against the insurance policies described in an Agreement.
- 1.28. "Operating Expenses" means actual costs to Contractor without mark-up that are directly associated with performance of Contractor's obligations under an Agreement for: (1) salaries, payroll taxes and other payroll expenses; (2) utility services; (3) repair and maintenance of equipment and furnishings; (4) routine maintenance and repair and for cleaning of the Premises, including, without limitation, expenses related to vandalism or other damage to gates, equipment, supplies or the Premises; (5) parking tickets, supplies and equipment; (6) license and permit fees not related to any alteration of the Facilities; (7) all insurance required by the Agreement; (8) the cost of any bonds required by the Agreement, but only to the extent that such bonds protect only the City's interests; (9) deductible amounts paid in accordance with any insurance policy required by the Agreement except as excluded in (b) below; (10) sales taxes and all other taxes resulting from operation of the Premises, except Parking Taxes, (11) real property taxes and possessory interest taxes; (12) courier deposit services, (13) settlements for claims against a Contractor that are not paid by insurance carriers and do not result from Contractor's negligence or willful misconduct, and (14) all other costs and expenses of Contractor that are approved by the City. Operating Expenses shall not include: (a) penalties or fees resulting from Contractor's late payment of taxes, bills, or other charges; (b) insurance deductibles or other payments or costs resulting from theft, employee negligence, dishonesty, or other acts of malfeasance; (c) Contractor's overhead costs that are not directly attributable to its operation of the Facilities; (d) attorney's fees or costs incurred in connection with any dispute with the City; or (e) costs to repair damage to the Facilities resulting from Contractor's and/or Contractor's employees' willful, intentional or grossly negligent acts.
- 1.29. "Parking Rates" means the fees, including any variable rates imposed to regulate occupancy levels, set by the City to be charged by a Contractor and collected from Facility patrons parking vehicles in the Facilities. The Parking Rates are set in accordance with Section 3.2 of these Regulations.

- 1.30. "Parking Taxes" means the Tax on Occupancy of Parking Space in Parking Facilities, as imposed by the Oakland Business and Tax Regulations Code, or any other federal, state or local tax or fee imposed on the occupancy of parking spaces.
- 1.31. "Parking Ticket" means the record provided by the Contractor to the vehicle operator setting forth the time and date that the operator's vehicle entered the Facility that is used by the Contractor to determine the Parking Rate due from the vehicle operator.
- 1.32. "Party" means the City or a Contractor; "Parties" means both the City and the Contractor.
- 1.33. "Premises" means the lands on which the Facilities are located and improvements upon those lands.
- 1.34. "Release" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Facilities or any other improvements constructed hereunder by or on behalf of Contractor or the City, or in, on, under or about the Land or the Facilities or any portion thereof
- 1.35. "Remediation" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Facilities, the Land or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.
- 1.36. "Revenue Account" means the account into which a Contractor is required to deposit Gross Revenues in accordance with Section 6.5 of these Regulations.
- 1.37. "Security Deposit" shall mean the special account established and maintained by the City, and designated as the Security Deposit Account.
- 1.38. "Property" means supplies, equipment and furnishings required for performance of the management and supervision services in the operation of the Facilities, including but not limited to, maintenance and cleaning equipment, tools, office and accounting equipment and office furnishings.
- 1.39. "Tax Collector" means the Tax Collector of the City.
- 1.40. "Term" means the period in which a Management Agreement is in effect, commencing on the Commencement Date and terminating in five years, unless extended or earlier terminated.
- 1.41. "Treasurer" means the Treasurer of the City.

- 1.42. "Unaccounted Parking Ticket" or "UPT" means any Parking Ticket described in Section 3.1 (a)(i) through (iv) of these Regulations.
- 1.43. "Valet Parking" means parking of customer vehicles by a Contractor.
- 1.44. "Valet Assisted Parking" means parking of customer vehicles by customers as directed by a Contractor.
- 1.45. "Validator Deposit" means the deposit charged by a Contractor to a merchant when a Contractor issues a parking ticket validator or other equipment to the merchant, as set forth in Section 3.1 (c) of these Regulations. For other equipment, the City may, in writing at the time of issuance, increase the dollar value of the validator Deposit.

## 2. SCOPE AND APPLICATION

- 2.1. These Facility Regulations shall apply to the management and operation of any off-street parking garages or lots (collectively, "Facilities") owned by the City of Oakland and subject to the Agreement between the City and the Contractor.
- 2.2. In the event of a conflict between the terms of these Facility Regulations and the terms of the Agreement subject to these Regulations, the terms of these Regulations shall control.
- 2.3. These Facility Regulations may be amended by the City's Designee following notice and an opportunity to comment.

## 3. DUTIES OF CONTRACTOR

- 3.1. *General Operational Duties.* A Contractor shall (i) supervise the proper and efficient parking of all vehicles utilizing each Facility, (ii) maximize the accessibility and safe use of the space available in each Facility, (iii) use best efforts to maximize the revenues generated by each Facility (in concert with City policies) and (iv) manage the parking of vehicles in each Facility using best practices and in a professional manner. In addition to the foregoing general duties, a Contractor shall be responsible for the following specific duties:
  - 3.1.1. *Daily Parking.* A Contractor shall charge, collect and deposit (in accordance with Section 6.5 below) all revenues from all users of each Facility and shall collect and account for all issued tickets. A Contractor shall provide each customer with a machine-generated receipt. A Contractor shall establish and maintain a Parking Ticket/Chip Coin system for all users of each Facility in a form prescribed and approved by the City and in accordance with all Laws. A Contractor shall order and purchase all Parking Tickets/Chip Coins to be issued at the Facilities. A Contractor shall issue a Parking Ticket/Chip Coin from the ticket dispenser to the operator of each vehicle entering each Facility unless the vehicle operator enters using a valid monthly parking pass, prepaid debit card, or other authorized means of prepayment. This requirement shall include the Contractor, employees of the Contractor and all vendors performing work at the Facility. Each parking ticket/chip coin that is issued

shall be date and time stamped to indicate arrival and departure of the vehicle and shall also be stamped upon payment with the charged amount. A Contractor shall maintain a ticket inventory system, inclusive of all tickets issued (regardless of physical condition or loss), identifying sequential numbering and reconciling tickets issued with revenues or use where applicable. The operator of each vehicle for which a Parking Ticket is issued shall pay the current posted Parking Rate, as amended from time to time by the City.

- 3.1.1.1. Altered Parking Tickets.** Any alteration to the dates or times of occupancy or charge different from the applicable posted rate must be approved by an Operations Manager who must state in writing on the Parking Ticket the reason for the change. Any changes made without such approval and written explanation shall be disregarded, and the Parking Ticket shall be deemed to have been collected in accordance with the date and time of entry and exit stamped on the Parking Ticket and the current Parking Rate approved by the City, and such amount shall be included in the Gross Revenues due to the City in accordance with the requirements of Section 6.7(a) of these Facility Regulations, whether or not such amount is actually received by the Contractor from the customer.
- 3.1.1.2. Mutilated or Destroyed Parking Tickets.** If a Parking Ticket is mutilated or destroyed, a Contractor shall prepare a report, which shall be included with the Monthly Report required by Section 6.7(a) of these Facility Regulations, showing the identification or serial number of the destroyed or mutilated Parking Ticket, explaining how it was destroyed or mutilated, attaching thereto any remnants of such Parking Ticket, and explaining how the Parking Rates approved by the City were applied. An appropriate amount for each mutilated or destroyed Parking Ticket based on the current Parking Rate approved by the City shall be included in the Gross Revenues due to the City in accordance with the requirements of Section 6.7(a) of these Facility Regulations, whether or not such amount is actually received by the Contractor from the customer.
- 3.1.1.3. Lost Parking Tickets.** If a Parking Ticket is lost by the operator of a vehicle parked in the Facility, a Contractor shall prepare a charge slip showing (A) the amount charged for parking, (B) the license plate or vehicle identification number, and (C) the name, telephone number and driver's license number of the operator of the vehicle. The completed charge slip must be signed by the vehicle operator. For each lost Parking Ticket, the Contractor shall include the amount for lost Parking Tickets specified in the current Parking Rate approved by the City in the Gross Revenues due to the City in accordance with the requirements of Section 6.7(a) of these Facility Regulations, whether or not such amount is actually received by the Contractor from the customer.
- 3.1.1.4. Other Irregular Parking Tickets.** Any other Parking Tickets for which payment is not received and remitted in accordance with the applicable posted rate and the date and

time of entry and exit (including a Parking Ticket that is issued, but for which there is no record of payment) shall be treated as a lost Parking Ticket and the Contractor shall be deemed to have collected the amount for a lost Parking Ticket specified in the current Parking Rates approved by the City, and such amount shall be included in the Gross Revenues due to the City in accordance with the requirements of Section 6.7(a) of these Facility Regulations, whether or not such amount is actually received by the Contractor from the customer.

**3.1.2. Monthly Parking (applicable only to Facilities providing monthly parking).**

**3.1.2.1.** A Contractor shall require all monthly users to execute a month-to-month agreement the form of which must be pre-approved by the City's Designee. The Contractor shall collect all monthly parking fees no later than the fifth calendar day of each month. The Contractor shall assess a late charge (as set forth in the Schedule of Parking Rates approved by the City) to monthly users who are delinquent in payment of their monthly parking fee. If a monthly user has not paid his or her monthly parking fee by the fifth calendar day of each month, the Contractor shall invalidate the security access cards of such delinquent monthly users before the sixth day of the month for which the monthly parking fee is unpaid. Delinquent monthly users may reactivate security access cards by paying a Twenty-five Dollars (\$25.00) late charge (or such other amount as may be set by the City in the Parking Rates), in addition to the delinquent monthly fee, to the Contractor. A Contractor may waive such late charges only for public entities and only in instances of written mutual consent between Contractor and the City. The Contractor shall maintain a written record of all late charges it waives. The Contractor shall supervise and control the billing and collection of the approved monthly Parking Rate and shall establish a security access system for monthly users. Should the security access system require the use of a security access card, the Contractor shall collect an access card deposit of Twenty-five Dollars (\$25.00) (or such other amount as may be set by the City in the Parking Rates) for each card issued (the "Access Card Deposit"). For any lost or destroyed cards, the Contractor shall reissue a new card and shall collect a charge for the lost or destroyed card in accordance with the current approved Parking Rates. Upon termination of any monthly agreement and return of the access card, the Contractor shall immediately refund to the monthly user his or her deposit, without interest. Once refunded, the Contractor may seek reimbursement from the City for the refunded amount as an Operating Expense; provided that the Contractor provides satisfactory evidence that such refund has been paid to the City and refunded to the monthly customer.

**3.1.2.2.** From time to time, the City's Designee may determine the maximum number of monthly parking agreements that shall be permitted in one or more of the Facilities. A Contractor shall deposit any amounts collected from monthly parkers, including amounts for Access Card Deposits, late charges or charges for re-issuance of a new access card into the Revenue Account no later than the next Banking Day after such

amounts are collected. A Contractor shall keep a written and an electronic record containing the names of all monthly users along with their access card number, parking commencement date, amount of access card deposit and date each payment is received and transferred to the Revenue Account, parking termination date and amount of deposit refund.

- 3.1.3. Validation Parking.** When and as directed by the City's Designee with the approval of the City Administrator, a Contractor shall enter into agreements with local merchants for validated parking. The City's Designee shall establish guidelines for validated parking. All validation agreements must be pre-approved by the City's Designee. The Contractor shall inform merchants and its authorized employees as to the correct procedures for validating a parking ticket. The Contractor shall collect a validator Deposit established by the City's Designee for each hand or electronic validator issued. Upon request of the City's Designee, a Contractor shall request the return of any validator, and upon its return shall immediately return to the merchant the deposit in full, without interest. For lost or destroyed validators, the Contractor shall issue a new validator and shall collect an additional Validator Deposit.
- 3.1.4. Valet and Valet Assist Parking.** When and as directed by the City's Designee, a Contractor shall provide for Valet Parking and/or Valet Assisted Parking in the Facilities.
- 3.1.5. Other Services.** A Contractor shall perform such other acts and duties as are required under the terms of the Agreement, and shall perform such other management and supervisory functions related to the operation of the Facilities as the City's Designee may require. All requests for additional services will be made in writing by the City's Designee.
- 3.1.6. Facility Names.** Each Facility shall be operated under the name specified in the Agreement as the name of the Facility. The City may in its sole and absolute discretion rename the Facilities.
- 3.1.7. Signs and Advertising.** Except for signs stating the Parking Rates and other pertinent information, and any signs required by applicable law, a Contractor shall not erect any signs, billboard, advertising, displays or political endorsements at the Facilities or permit the circulation of any commercial announcements, pamphlets or circulars without the City's Designee's prior consent. The Contractor shall not allow the placement of any material, of any size, on the Facility of any vehicle contained therein. The City shall have the right to lease or use, any or all portions of the Facilities for advertising. Such arrangements may be under separate agreements between the City and any third party. Although a Contractor may not be obligated to manage these arrangements, Contractors shall cooperate in good faith with the City and such parties.
- 3.1.8. Storage Rental.** A Contractor shall not allow any storage rental unless pre-approved in writing by the City. If such storage rental is approved, the Contractor shall require all monthly users to execute a rental agreement and release form, which form must be pre-



approved by the City's Designee. All collected fees shall be deposited into the Revenue Account on the day such amount is collected or the next Banking Day.

- 3.1.9. Commercial Use.** Except for parking, a Contractor shall not permit the use of any portion of the Facilities for commercial purposes without the City's Designee's prior consent. The City shall have the right to lease any or all parts of the Facilities for other commercial uses, including, without limitation, vending machines, telephone services and storage rentals. Such arrangements may be under separate agreements between the City and any third party. Although a Contractor may not be obligated to manage these leasing arrangements, Contractors shall cooperate in good faith with the City's Designee and such third parties.
- 3.1.10. Vending Machines, ATMs and Telephones.** The installation of any vending machines, ATMs or telephones in the Facilities must be pre-approved in writing by the City's Designee. Once approved, a Contractor will be charged with the responsibility of entering into any necessary agreements with such parties and administering such contractual relationship. Such agreements shall not exceed the term of the Management Agreement unless pre-approved by the City's Designee, and may in any event be subject and subordinate to the Agreement. Such agreements shall also be assignable to the succeeding Contractor or the City without additional payment or cost. In the event that General Operational Duties 3.1.h-j result in a net reduction in total parking capacity at one or more Facilities, the City's Designee will make appropriate adjustments to the Contractor's Net Parking Income Target.
- 3.1.11. Public Use of Facilities.** Contractors acknowledge that the public is entitled to use the Facilities, subject to the rates, charges, hours, space availability and rules of operation as set forth herein and adopted pursuant to the terms of the Agreement.
- 3.1.12. Compliance with Laws.** A Contractor and any subcontractors of the Contractor shall comply and conform with all applicable Laws, including these Facility Regulations and all other governmental regulations, rules and orders, existing and as may be enacted during the Term of the Agreement relating to, controlling, or limiting the use and operation of the Facilities. A Contractor shall secure all permits and licenses specifically required for the operation of the Facilities (copies of which shall be promptly provided to the City's Designee), and shall not use or occupy any Facility in an unlawful, noisy, improper or offensive manner. A Contractor shall use its best efforts to prevent any occupancy of the Facilities or use made thereof which is unlawful, noisy, improper or offensive or contrary to any law or ordinance applicable to the Facilities. A Contractor shall not cause or maintain any nuisance in or about the Facilities, and shall use its best efforts to prevent any person from doing so. Nor shall a Contractor cause or allow any rubbish, dirt or refuse to be placed in the streets, sidewalks or alleys adjoining the Facilities or to accumulate in the Facilities. Further, a Contractor shall use its best efforts to ensure that all patrons of the Facilities comply with these Facility Regulations and any other rules, regulations, or restrictions that the City or the City's Designee may adopt during the Term of the Agreement.

**3.1.13. Revenue Control and Parking Receipts.** Contractor shall comply with applicable laws or any successor provisions to those laws, which require parking garages to have and maintain in good operating condition revenue control equipment at all times, to provide receipts to all occupants with the exception of occupants in possession of a monthly access card, and to have certain signage, all as more fully set forth therein. Any violation of these requirements shall be deemed a breach of these Facility Regulations and the Agreement, and the City shall have all rights and remedies set forth in the Agreement, including but not limited to, the right to terminate the Agreement. With the exception of the provisions of these Facility Regulations as to Unaccounted Ticket Ratio, to the extent that any provision of these Facility Regulations or the Agreement conflicts with any provision of any City ordinance, the ordinance shall govern.

**3.1.14. Revenue Protection.**

**3.1.14.1.** A Contractor shall take all necessary measures, applying the highest standard of care, to ensure that all parking charges, rents, fees, and other Gross Revenues are properly collected, and accounted and remitted to the City. The City strongly recommends that Contractors use armored vehicles and armed security guards when transporting Gross Revenues in the form of cash.

**3.1.14.2.** A Contractor shall take all necessary measures, applying the highest standard of care, to ensure that Parking Tickets, including but not limited to replacement, motorcycle, early bird, flat fee, carpool, and merchant or commercial tenant validation parking tickets, are not used to defraud the City of Gross Revenues or otherwise convert, conceal, misappropriate, or not account Gross Revenues.

**3.2. Facility Parking Rates.**

**3.2.1.** For all vehicles parked in each Facility, a Contractor is authorized and directed to charge and collect parking fees according to the Parking Rates Schedules approved by the City for that Facility. Upon a change in the Parking Rates Schedules, the City's Designee will give written notice to the Contractor as to the new Parking Rates and their effective date(s). Upon receiving such notice, the Contractor shall take such measures necessary to implement the new Parking Rates on the effective date, including timely updating of all Parking Rate signage, in accordance with established signage standards. A Contractor shall not adjust the authorized Parking Rates or collect any other rates or charges at the Facilities or provide free (no charge) parking to any person except as specifically authorized by the City. A Contractor shall not be entitled to any further compensation or consideration because of a change in the Parking Rates.

**3.2.2.** The Contractor shall conduct semi-annual market parking rate surveys within a three block radius of each City garage under the Contractor's agreement and make recommendations to the City on proposed rate adjustments. The Contractor will summarize the rate surveys to provide an inventory of the various supplies in each area and

the rate structures that apply to them. The Contractor also will be expected to develop recommended rate adjustments based on these findings.

- 3.3. *Emergency and Disaster Response Plan.* A Contractor shall maintain a current Emergency and Disaster Response Plan at each Facility in a format acceptable to the City's Designee with a current copy to the City. This plan shall consist of Emergency Procedures, Company and the City Designee's contact information. A Contractor is obligated to properly train all personnel how to carry out the Emergency and Disaster Response Plan and to only allowed trained personnel to operate Facilities. This plan must outline procedures for employees to follow in the event of an emergency and describe a plan of action for each Alert Level defined for a specific threat or disaster.
- 3.4. *Operating Manual.* A Contractor shall maintain at each Facility a current Company Operating Manual for the Facility containing Standard Operating Procedures (SOPs) that include, but are not limited to, safety standards and procedures, cash handling procedures, customer service standards, employee training, and Facility maintenance standards. The Contractor shall provide the City's Designee with this manual on the execution date of the Agreement, and shall promptly provide the City's Designee with any updates. The Contractor will make necessary changes to the SOP manual at the City Designee's request in order to ensure that best practices are followed. A Contractor is obligated to properly train all personnel in the operation of Facilities and to only allow trained personnel to operate Facilities.

#### 4. EQUIPMENT AND CAPITAL IMPROVEMENTS

- 4.1. *Ordering and Purchasing of Supplies, Equipment and Furnishings.* A Contractor shall provide such supplies, equipment and furnishings required for performance of the management and supervision services in the operation of the Facilities, including, but not limited to, maintenance and cleaning equipment, tools, office and accounting equipment and office furnishings. The cost of purchasing all such supplies, equipment and furnishings shall be considered Operating Expenses. All equipment, supplies and other tangible personal property paid for as an Operating Expenses shall be and remain the property of the City. A Contractor shall be responsible for the care and safekeeping of all Property and shall use such property only in connection with the operation of the Facilities. Except for supplies and other property that are routinely used and consumed in the operation of a parking Facility, a Contractor shall not dispose of any Property without the written consent of City's Designee.
- 4.2. *Construction of Improvements.* A Contractor shall not make any alterations or improvements to or upon the Facilities without the prior written approval of the City's Designee. The City's Designee may require a Contractor to implement specific capital improvements during the term of the Agreement. With the exception of emergency repairs, which shall require the written approval of the City's Designee, any such capital improvements shall require the approval of the City Administrator and shall be performed (i) in strict accordance with any plans and/or specifications approved in advance by the City's Designee in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the City's Designee after the

Contractor obtains at least three quotes for the capital improvement work (provided, in no event shall a Contractor solicit less than three (3) quotes for any capital improvement over \$5,000.00), (iii) in a good and workmanlike manner, (iv) in strict compliance with all laws and subject to all other conditions that the City's Designee may impose. Prior to the commencement of any work, a Contractor shall procure all required permits and approvals and shall promptly deliver copies of such approvals and permits to the City's Designee upon receipt. No material change from the plans and specifications approved by City's Designee may be made without the City's Designee's prior consent. The City's Designee shall have the right to inspect the progress of the capital improvement work at all times. If required by the City's Designee, upon completion of the capital improvements, a Contractor shall furnish City's Designee with a complete set of final as-built plans and specifications. Notwithstanding anything in the Agreement or these Facility Regulations to the contrary, the actual costs and expenses incurred by a Contractor in the performance by it of the obligations set forth in this Section shall be an Operating Expense. Upon completion of the improvement, the City shall own all capital improvements completed pursuant to this Section.

## 5. MAINTENANCE AND REPAIRS

5.1. **Routine Maintenance and Repairs.** A Contractor shall maintain the Facilities in a clean, safe, sanitary and attractive condition commensurate with the standards of maintenance, repair and operation set forth in the Agreement. For purposes of the Agreement, "routine maintenance and repair work" means all ordinary maintenance and repair of the premises and equipment and replacement of supplies that are normally performed on a daily or routine basis in order to keep the Facilities in an efficient, clean and safe condition. Such routine maintenance and repair work shall include without limitation:

5.1.1. Repairing lamps and lighting fixtures and replacing bulbs, fluorescent tubes and ballasts; replacing Parking Tickets/Chip Coins in Parking Ticket issuing machines; maintaining and replacing, if required, gate arms on traffic entry and exit gates; maintaining, repairing and replacing sliding or overhead doors and gates, and roll up doors; maintaining revenue control equipment (at the sole discretion of the City or the City's Designee); repairing, replacing and cleaning signs; maintaining heating, ventilating and other mechanical equipment; maintaining fire alarm call boxes, extinguishers and hose boxes in good working order; maintaining plumbing in good and sanitary working order; and performing emergency maintenance and repairs as required to maintain the premises in good and safe condition.

5.1.2. Regular cleaning of all parking areas, Facility offices, drainage systems and other portions of the Facility premises; regular washing of all windows; prompt removal of dirt, debris, oil, grease and other liquids from the parking areas, floors and stairways; regular cleaning of floors, walls and ceilings of the pedestrian areas; regular removal of accumulated trash and other rubbish; regular cleaning of the sidewalks on all sides of the Facilities; regular cleaning and maintenance of the common areas and bathrooms (including trash removal

and proper disposal); and such other cleaning as shall be required to keep the premises in a clean, safe and attractive condition.

5.1.3. Striping of the floors and surfaces of the Facilities as needed.

5.1.4. Otherwise cleaning, repairing and painting the floors and walls and fences of the Facilities and the sidewalks, curbs and driveways thereof as needed (particularly when such surfaces have been marred by graffiti or other forms of vandalism).

5.1.5. Contracting for full-service elevator maintenance, if applicable, with a subcontractor acceptable to the City.

5.1.6. Contracting for electricity, telephone, vermin extermination, trash collection, water, sewer and any other similar utilities or services necessary to the operation of the Facilities. Contractor shall pay all billings for the above services when due.

5.1.7. Steam cleaning of all sidewalks and any interior stairwells shall be performed on a quarterly basis and of each entire Facility on a semi-annual basis. At the discretion of the City's Designee, steam cleaning may be required to be performed less frequently if the Facilities, including sidewalks and stairwells, are maintained in a clean and orderly state.

5.1.8. Prompt removal of bird droppings from floors and all accessible surfaces.

5.1.9. Thorough cleaning of all ventilation system supply and exhaust vents shall be performed on a semi-annual basis as applicable.

5.1.10. Any other maintenance or repair required by the City's Designee.

5.1.11. Removal of graffiti in accordance with the requirements of the Agreement.

A Contractor shall perform all the foregoing maintenance duties in accordance with the Maintenance Schedule provided by City's Designee. The City's Designee shall have the right to require the Contractor to perform certain duties specified in such schedule more frequently than provided therein, should greater frequency be required to achieve the defined standard of care stipulated in the Agreement. A Contractor shall be responsible for completing the Maintenance Checklist provided by City's Designee and maintaining such checklist at the Facilities at all times. Upon demand of the City's Designee, or his or her designee, the Contractor shall present such Maintenance Checklist.

5.2. *Failure to Perform.* The City's Designee may direct a Contractor to perform routine maintenance and repair work that is necessary to keep the Facility in good and clean condition and in a proper state of repair. If the Contractor does not commence performance of such routine maintenance and repair work within seventy-two (72) hours after the notice is given and thereafter diligently prosecute it to completion, the City's Designee may cause such routine maintenance and repair work to be performed by other contractors and the cost thereof to be either (i) disbursed from the Security Deposit, or (ii) deducted from the Management Fee(s). In

the event the City contracts to have such routine maintenance and repair work performed, the Contractor shall reimburse the City for work and administrative time expended in having the routine maintenance and repair work performed. If the Security Deposit is used to pay these costs, the City will deduct the amounts paid from the Management Fee costs, and deposit the cost of services back into the Security Deposit Account until replenished. Any work performed as described herein shall not be considered an Operating Expense, and the costs of such work shall not be reimbursed by the City.

5.3. *Security Deposit Account upon Termination.* Upon termination or expiration of the Agreement, the will inspect the Facilities and report in writing to the Contractor all routine maintenance and repair work necessary to put the premises in good and clean condition and in a proper state of repair. Upon issuance of such report, the City's Designee may cause such routine maintenance and repair work to be performed with the cost thereof to be disbursed from the Security Deposit. If the balance of the Security Deposit is insufficient to cover the cost of such work, the Contractor shall pay upon demand any deficiency to the City. The City shall also have the right to use any funds in the Security Deposit to satisfy any unpaid financial obligation or liability that a Contractor may have under the Management Agreement. After satisfaction of such unpaid amounts, the remaining balance shall be returned to the Contractor, with any interest having accrued thereon.

5.4. *Long-Term Maintenance and Repairs.* As used in these Facility Regulations, the term "long-term maintenance and repairs" means all such maintenance and repair work that the City's Designee reasonably determines is extraordinary and beyond the normal routine maintenance and repair work to be performed by a Contractor. The City may request the Contractor to seek bids for the specific project. After submission of such bids, the City may elect to (i) award the bid to the most qualified bidder or (ii) reject all bids. If the City elects to proceed with the proposed project, the Contractor shall cause the work to be done, pay for the work when it has been completed and include such reimbursement requests in the next Monthly Report. A Contractor shall inform the City's Designee of long-term maintenance or repair projects that are necessary to maintain the Facilities in their current or better condition.

## 6. FISCAL DUTIES AND MATTERS

6.1. *Annual Budget.* The Contractor shall prepare an annual operating and capital budget ("Budget") for each Facility under its management for review by the City's Designee at a minimum four (4) months in advance of the expiration of the then current Budget. The Budget shall be in the form provided by City's Designee. After review and approval, the City's Designee will return the Budget to the Contractor. The Contractor will follow the approved Budget commencing the first day after the end date of the previous Budget.

6.2. *Marketing Plan.* A Contractor shall, at City's Designee's request, prepare a marketing plan for each Facility under management, outlining the Contractor's plans to market the Facilities and expand business at the Facilities. The City's Designee may review the marketing plan and recommend changes.

- 6.3. *Revenue Account.* The City shall establish and maintain a special account designated as the Revenue Account for each Facility at a Financial Institution approved by the City's Finance Designee. The Contractor shall be authorized and required to make daily deposits into the Revenue Account for each day that a Facility is operated.
- 6.4. *Security Deposit.* The City will establish and maintain a special account designated as the Security Deposit Account in the amount established in the Agreement. This account will be established from the Contractor's Proposal Security received during the RFP process, with the balance due and payable not later than the date of execution of the Agreement. Any Proposal Bond submitted as a Proposal Security during the RFP process may not be used as a Security Deposit and Contractor must submit a check in the amount equivalent to the Proposal Security upon commencement of the Agreement. This Security Deposit shall be returned to the Contractor, with interest, in accordance with the terms of the Agreement.
- 6.5. *Gross Revenues and Other Monies; Deposits and Transfers of Monies.* All Gross Revenues generated by the Facilities shall be the sole and exclusive property of the City and shall be held in trust for the City. Notwithstanding a Contractor's receipt of Gross Revenues on behalf of the City, a Contractor shall have no right, title, interest, lien or set-off rights on or against any portion of the Gross Revenues generated by the Facilities. A Contractor shall safeguard all Gross Revenues with the highest degree of care. All revenues, monies and deposits collected or received by a Contractor arising out of operations of the Facilities shall be deposited in the Revenue Account no later than the next Banking Day after such amounts are collected. A Contractor shall not commingle any of the above accounts or sources of revenue. If a Contractor fails to deposit Gross Revenues including Parking Taxes as specified in this Section, the Contractor shall pay the interest on the amount that was not timely deposited in accordance with the late payment provisions in the Agreement until such time the amount is deposited in the manner prescribed in these Facility Regulations, and such interest payment shall not be an Operating Expense. A Contractor's failure to deposit Gross Revenues including Parking Taxes on a timely basis shall constitute a material breach of the Agreement, and a Contractor's obligation to pay interest on funds not deposited shall not limit any other rights or remedies they may have under the Agreement with respect to such default. A Contractor shall be responsible for, and liable for any damages arising from, the secure transport and delivery of Gross Revenues in accordance with these Facility Regulations and the Agreement. Until monies charged and collected by the Contractor on behalf of the City are deposited in accordance with these Facility Regulations, the Contractor shall assume all risk of loss of such monies, including, but not limited to, loss by damage, destruction, disappearance, theft, fraud, counterfeit bills/coins, or dishonesty.
- 6.6. *Daily Accounting.* Every day of operation, the Contractor shall prepare a daily report ("Daily Report") for each Facility in a form approved by the City's Designee. If requested by the City's Designee, the Contractor shall submit the Daily Reports to the City on a daily basis in electronic form. All Daily Reports must be certified true and correct by the Contractor. A Contractor may modify the format of the Daily Report with the City's Designee's prior written approval.

6.7. **Monthly Report.** By the 10<sup>th</sup> day of each month, the Contractor shall deliver to the City's Designee a monthly report ("Monthly Report") for each Facility in a form approved by the City's Designee. The Monthly Report shall be provided in both electronic and hard copy format and include an accounting of all Gross Revenues and a description of Operating Expenses, as set forth in Section 6.8.

6.7.1. The Monthly Report shall provide an accounting for all Unaccounted Parking Tickets, as set forth in Section 3.1(a)(i)-(iv) of these Facility Regulations. The Monthly Report shall include the original of any UPT that has been altered or mutilated, and shall also include any remnants of any Parking Ticket claimed as destroyed, as well as the information set forth in Section 3.1(a)(iii) for any Parking Ticket claimed as lost, and the information required by Section 3.1(a)(iv) for any other irregular Parking Ticket. The City's Designee may review the UPT information submitted by a Contractor, and may reject any such claim that he or she determines is not adequately supported by evidence. Where the total number of insufficiently documented UPTs at each Facility is equal to or less than one-quarter of one percent (0.25%) of the total number of Parking Tickets issued in the Facility in a calendar month as indicated by the revenue control equipment for the Facility, notwithstanding the provisions of Section 3.1(a)(i)-(iv), the Contractor shall not be charged for the UPTs. Where the number of such Parking Tickets exceeds one quarter of one percent (0.25%) of the total number of Parking Tickets issued in the Facility in a calendar month, the Contractor shall be liable for the full amount due in accordance with Section 3.1(a)(i)-(iv) of these Facility Regulations for all insufficiently documented UPTs issued in the Facility, which amount shall be deducted by the City from the next payment of Operating Expenses due to the Contractor under the Agreement.

6.7.2. Each Monthly Report shall include the printer's manifest or other Parking Ticket inventory system, showing and certifying as correct the beginning and ending serial numbers by the printer for all Parking Tickets received by a Contractor during the month for use at the Facilities.

6.7.3. For each day submittal of the Monthly Report is late, a Contractor shall incur a late charge of One Hundred Dollars (\$100) per Facility as liquidated damages payable to the City to cover administrative costs for revenue report and projection revisions, and such late charges shall not be an Operating Expense. All submitted Monthly Reports must be certified as true, correct, and complete by the Contractor. Should the City detect any inaccuracies in the Monthly Reports that were not previously communicated by the Contractor, the City may, in its discretion and without limiting the City's other rights and remedies hereunder, impose a charge of Two Hundred Dollars (\$200) for each Monthly Report misreported to cover administrative costs to correct revenue reports and projections. Such charges shall be deducted by the City's Designee from the next payment of the Management Fee under the Agreement or from the Security Deposit. The aforementioned charges shall not be considered a penalty, but are the reasonable cost to



the City incurred by the Contractor's delay. The City's Designee may modify the form of the Monthly Report and change the due date of the Monthly Report

- 6.7.4. The Monthly Report shall include all usage data by customer type, marketing initiatives conducted during the month, any capital expenditures incurred during the month and any extraordinary operational or management efforts.

#### 6.8. Operating Expenses

6.8.1. For all Operating Expenses for which a Contractor seeks reimbursement, the Contractor shall, for each Facility, submit twice per month or as needed complete documentation, an invoice and statement listing all operating expenses for the month together with all original invoices, receipts or other evidence, including all operating expenses incurred since the previous invoice and statement, including all salaries, wages, payroll taxes, and benefits described in the Agreement, and the Contractor's management fee. Each invoice, in a form approved by the City's Designee, shall be accompanied by such supporting documentation evidencing such operating costs, salaries, wages, payroll taxes and benefits as the City shall require. The monthly invoice shall include as a credit to the City any amounts due for UPTs in accordance with Sections 3.1(a) and 6.7. All invoices for which a Contractor is seeking payment of shall: (1) be prepared by the Contractor and signed by the authorized representative of the Contractor; (2) identify the line item of the Approved Budget under which reimbursement is requested; (3) include documentation of the quotes or bids obtained when required pursuant to paragraph (b) below; (4) for unbudgeted expenses, include written approval of the City's Designee, and (5) be submitted to the City's Designee for approval. To qualify as an Operating Expense, the following conditions must also be satisfied: (1) the Contractor must have submitted the required documentation requested above, (2) the expenditure must have been authorized in the Approved Budget, and (3) the expenditure must have been approved by the City's Designee. The City will reimburse the Contractor by wire or by disbursing a check at the address specified for notice in the Agreement. The City shall not reimburse a Contractor for any interest charges or late penalties imposed on the Contractor due to late payment of its bills, taxes or fees. Notwithstanding the foregoing, those Operating Costs related to a Contractor's labor expenses described in the Agreement shall be reimbursed, subject to the documentation and approval requirements described above, on a monthly basis. The City's Designee shall have ultimate approval of all Operating Expenses.

6.8.2. In no event shall a Contractor contract for or purchase any one item, other than payroll, which exceeds One Thousand Dollars (\$1,000.00) in cost or any item which costs in excess of the amount set out on the approved Budget without the prior written approval of the City's Designee. Any rebate or discount obtained by a Contractor in connection with the Agreement shall be the property of the City. All expenses in excess of One Thousand Dollars (\$1,000.00), including reoccurring expenses such as Parking Tickets/Chip Coins

unless service is from a sole source supplier, shall be documented with three written quotes submitted for written approval before the purchase is made.

- 6.9. *Parking Taxes.* The Contractor shall comply with the requirements of the Oakland Business and Tax Regulations Code to collect all Parking Taxes, sales taxes and other taxes due, which shall be deposited into the Revenue Account and accounted for separately. The Contractor shall submit to the City with each Monthly Report a full accounting of all taxes due and payable to any third party, including any taxes due to the City. The Contractor shall provide the City with the monthly prepayment statement ten (10) days prior to the date due. The Contractor is liable for any interest or penalties incurred due to late payment of taxes, which shall not be considered an Operating Expense or otherwise reimbursed by the City. The Certificate of Authority to collect Parking Tax shall be posted in each Facility in a prominent location at all times during the Term of the Agreement.
- 6.10. *City's Right to Audit and Inspect Records.* The Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under the Agreement. The Contractor will permit the City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by the Agreement, whether funded in whole or in part under the Agreement. The Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under the Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of the Agreement shall have the same rights conferred upon the City by this Section.
- 6.11. *Audit.* The Contractor shall cooperate in audits of its books and records relating to the Facilities and the Contractor's compliance with the Management Agreement. The audits shall be conducted at the direction of the City's Designee or the City Auditor or by an auditor selected by the City or the City Auditor. The City or the City Auditor shall determine the scope of said audit(s), which may include but are not limited to the Contractor's compliance with the terms of the Agreement and these Facility Regulations, determining the amount of Gross Revenues and Parking Taxes received by the Contractor from the operation of the Facilities; the Gross Revenues and Parking Taxes deposited into the Revenue Account; any differences between the Gross Revenues and Parking Taxes reported and the Revenue Account deposits and audited revenues; and the form and method of the Contractor's record keeping. The audits may include review of capital expenditures, compliance with any provisions of the Agreement and these Facility Regulations or any other item related to administration of the Agreement or the financial stability of the Contractor at the discretion of the City's Designee.
- 6.12. *Books and Records.* A Contractor shall establish and maintain at each Facility books, records and systems of account, including all records relating to Revenue Control Equipment at the Facilities in accordance with generally accepted accounting principles, consistently applied

reflecting all business operations of Contractor transacted under the Agreement. To the extent a Contractor has not complied with generally accepted accounting principles, the City's Designee may require Contractor to restate its books, records and systems of account to conform to such requirements. These books, records and systems of account shall be retained by a Contractor during the term of the Agreement and for at least three (3) years thereafter, and shall be available at all reasonable times, with or without notice, for inspection and audit by the City or its agents. Upon expiration or early termination of the Agreement, all such books, records and systems of account shall be delivered to the City's Designee. All used and unused parking tickets, tapes and other records used in the operation of the Facilities are owned by the City, but shall be retained by a Contractor at the Facilities unless the City's Designee requests otherwise. Such tickets, tapes and records shall be available at all reasonable times, with or without notice, for inspection and audit by either the City's Designee or his/her agents, and shall not be destroyed without prior written consent from the City's Designee.

**APPENDIX C: PROFESSIONAL SERVICES INSURANCE REQUIREMENTS**

## Schedule Q

### INSURANCE REQUIREMENTS PROFESSIONAL AND SPECIALIZED SERVICES AGREEMENTS

(Revised 08/01/11)

#### A. General Liability, Automobile, Workers' Compensation and Professional Liability

Consultant shall procure, prior to commencement of service, and keep in force for the term of this contract, at Consultant's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Consultant shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. Commercial General Liability insurance shall cover bodily injury, property damage and personal injury liability arising from premises operations, independent Consultants, products-completed operations personal & advertising injury and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)
  - a. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents and employees and volunteers shall be primary insurance. Any other insurance available to the City Councilmembers, directors, officers, agents and employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement).
  - b. Limits of liability: Consultant shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ii. Automobile Liability Insurance. Consultant shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.
- iii. Worker's Compensation insurance as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, \$1,000,000 each employee bodily injury by disease. The Consultant certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Consultant shall comply with the

provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

- iv. **Professional Liability/Errors and Omissions insurance** appropriate to the Consultant's profession with limits not less than \$2,000,000 each claim and \$2,000,000 aggregate. If the professional liability/errors and omissions insurance is written on a claims made form:
  - a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.
  - b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
  - c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, the Consultant must purchase extended period coverage for a minimum of three (3) years after completion of work.

B. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. **Insured Status (Additional Insured):** Consultant shall provide insured status using ISO endorsement CG 20 10 or its equivalent naming the City of Oakland, its Councilmembers, directors, officers, agents and employees and volunteers as insured's in the Comprehensive Commercial General Liability policy. If Consultant submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on a CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT.
- ii. **Cancellation Notice:** 30-day prior written notice of termination or material change in coverage and 10-day prior written notice of cancellation for non-payment.
- iii. **The Workers Compensation policy** shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subconsultants.
- iv. **Certificate holder** is to be the same person and address as indicated in the "Notices" section of this Agreement.
- v. **Insurer** shall carry insurance from admitted companies with a Best Rating of A VII or better.

C. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Consultant, such insurance in the name of Consultant as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Consultant under this Agreement.

D. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

E. Proof of Insurance

Consultant will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Consultant's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

F. Subconsultants

Should the Consultant subcontract out the work required under this agreement, they shall include all subconsultants as insured's under its policies or shall maintain separate certificates and endorsements for each subconsultant. As an alternative, the Consultant may require all subconsultants to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Consultant shall be named as additional insured under the subconsultant's General Liability policy. All coverages for subconsultants shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

G. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

H. Waiver of Subrogation

Consultant waives all rights against the City of Oakland and its Councilmembers, officers, directors and employees for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

I. Evaluation of Adequacy of Coverage

The City of Oakland maintains the rights to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

J. Higher Limits of Insurance

If the Consultant maintains higher limits than the minimums shown above, The City shall be entitled to coverage for the higher limits maintained by the Consultant.

**END OF SCHEDULE Q – INSURANCE REQUIREMENTS**



**APPENDIX D: STRUCTURAL AND OPERATING CHARACTERISTICS OF PARKING FACILITIES**

The following table offers information concerning the structural and operating characteristics of the parking facilities included in this RFP. While every effort has been made to ensure the accuracy and completeness of this information, it is only offered as a guide. As such, the City reserves the right to change this table as new information becomes available. The City expects proposals to be based on information that has been independently confirmed.

Facility	Address	Parking Spaces	Type	Year Built	Replacement Cost*	PARCS
City Center West Garage	1250 Martin Luther King Jr. Way	1461	Garage	1991	\$54,057,000	S&B
Clay St Garage	1414 Clay St	335	Garage	1960	\$12,395,000	S&B
Dalziel Garage	250 Frank Ogawa Plaza	213	Garage	1998	\$7,881,000	S&B
Franklin 88 Garage	9th and Franklin St	224	Garage	2004	\$8,288,000	McGann
Franklin Plaza Garage	1719 Franklin St./415 19th St	482	Garage	1975	\$17,834,000	S&B
Harrison St Garage	1200 Harrison St	200	Garage	1988	\$7,400,000	S&B
Telegraph Plaza Garage	2102 Telegraph Ave	351	Garage	1975	\$12,987,000	S&B
UCOP Garage	409 12th St	145	Garage	1998	\$5,365,000	Secom
Willie Manuel Courthouse Lot	525 6th St	223	Lot	-	n/a	Manual

\* Replacement cost is calculated by multiplying the number of parking stalls in the garage by \$37,000.

Facility	Levels	Elevators	Entry Lanes	Exit Lanes	Nested Parking Areas	POF Machines
City Center West Garage	9	4	6	7	1	4
Clay St Garage	5	1	1	2	0	2
Dalziel Garage	2	2	1	1	0	2
Franklin 88 Garage	3	2	1	1	0	0
Franklin Plaza Garage	5	2	1	2	0	2
Harrison St Garage	3	1	1	2	1	2
Telegraph Plaza Garage	2	0	2	2	0	2
UCOP Garage	2	1	1	1	0	0
Willie Manuel Courthouse Lot	1	0	1	1	0	0

Facility	Rest-rooms	Office	Special Structural Conditions	Special Operating Conditions
City Center West Garage	2	Yes	Facility is post tension slab and beam structure above grade; below grade is a 'boat' with waterproofing; stairs and elevators have glass windows for safety and security; retail spaces are conventional steel framed construction abutting the separation wall which is masonry	Former Redevelopment Agency property; 24/7 security center; retail agreements with City Grille and City Cup; 5 year parking agreement with US GSA; City of Oakland parking enforcement and pool vehicles are currently designated for parking at CCWG
Clay St Garage	1	No	Northside stairwells closed due to erosion.	Reserved parking in basement
Dalziel Garage	1	No	Unknown	Unknown
Franklin 88 Garage	0	No	Some parking stalls equipped with car lifts	Former Redevelopment Agency property
Franklin Plaza Garage	1	Yes	Unknown	Unknown
Harrison St Garage	2	No	Unknown	Part of Frank Mar complex; residents park in lower nested parking level
Telegraph Plaza Garage	1	No	Unknown	Former Redevelopment Agency property
UCOP Garage	0	No	Unknown	Under long-term contract with UCOP; adjacent owner has option to purchase.
Willie Manuel Courthouse Lot	0	No	Unknown	Unknown

Facility	Hourly Rate	Early Bird Rate	Monthly Rate	Maximum Daily Rate	Evening Rate	Sunday Rate	Other Rates
City Center West Garage	\$2/30min	\$14	\$195-250	\$40	n/a	n/a	\$5 for UOP students after 5pm
Clay St Garage	\$1.00/15min	n/a	\$130-160-180	\$14	\$6	n/a	City Council + Saturdays free
Dalziel Garage	\$1.00/15min	n/a	\$130-160	\$14	\$6	n/a	n/a
Franklin 88 Garage	\$1.50/hr	\$8	\$155-175	\$14	\$6	\$6	\$6 flat rate on weekends; \$10 overnight
Franklin Plaza Garage	\$1.00/20min	n/a	\$120-160-180	\$14	\$6	n/a	n/a
Harrison St Garage	\$2/hr	n/a	\$100	\$10	\$6	n/a	n/a
Telegraph Plaza Garage	\$2/hr	\$7	\$100	\$14	\$6	n/a	\$10 special event
UCOP Garage	\$1.00/30min	\$11	\$142	\$13	\$0	n/a	n/a
Willie Manuel Courthouse Lot	\$2/hr	n/a	\$90	\$10	n/a	n/a	n/a

Facility	Hours of Operation Monday - Friday	Hours of Operation Saturday	Hours of Operation Sunday	Other Hours of Operation
City Center West Garage	5am-11pm	Closed (except 24hr monthly access)	Closed (except 24hr monthly access)	n/a
Clay St Garage	6:30am-11:15pm	9:30am-7:30pm	Closed (except 24hr monthly access)	n/a
Dalziel Garage	7am-7pm	Closed(except for 24hr monthly access)	Closed (except 24hr monthly access)	n/a
Franklin 88 Garage	24/7	24/7	24/7	24/7
Franklin Plaza Garage	7am-7pm	Closed(except for 24hr monthly access)	Closed (except 24hr monthly access)	n/a
Harrison St Garage	7am-7pm	Closed (except 24hr monthly access)	Closed (except 24hr monthly access)	n/a
Telegraph Plaza Garage	6am-7:15pm	8am-6pm	closed	6am-11pm on First Fridays
UCOP Garage	7am-8pm	Closed	Closed	n/a
Willie Manuel Courthouse Lot	7am-8pm	closed	closed	n/a

# CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 4314 • OAKLAND, CALIFORNIA 94612  
Public Works Agency (510) 238-7270  
Contract Services FAX (510) 238-2346  
TDD (510) 238-3254

## ADDENDUM NO. 1

July 18, 2013

**Subject:** RFP for Operation & Management of Parking Facilities

**To:** All Prospective Bidders

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The clarifications, additions and/or deletions contained in this ADDENDUM shall be made a part of the contract documents (plans, specifications, etc.) for the above-referenced project, and shall be subject to all applicable requirements there-under, as if originally shown and/or specified. The contract documents are revised as follows:

- 1) Extension of Due Date for Proposals: 2:00 PM, August 13, 2013. Proposals not received by the Reception Desk for the Public Works Agency, 250 Frank Ogawa Plaza, Suite 4314, Oakland, CA 94612 by the deadline will be returned unopened.
- 2) Removal of W. M. Courthouse Lot from Scope of Work: Due to circumstances beyond the City's control, the W. M. Courthouse Lot located at 525 6<sup>th</sup> St is hereby removed from the list of included parking facilities found on p.3 of the RFP.
- 3) Change in structure of the Management Fee: the RFP currently reads, "A Management Fee not to exceed \$8,540 per month (reflecting a per parking space management fee of \$2.35) is established for all nine parking facilities (not each facihty)" (p.6). This addendum replaces that language with the following: A Management Fee not to exceed \$2.45 per parking garage stall and \$1.45 per parking lot space is hereby established. For the eight remaining facilities listed on p.3 of the RFP, this calculates out to a total Management Fee of \$8,357 per month. The same rates will apply when adding or subtracting facilities in the future.
- 4) Clarification: in response to requests for additional information about past or current operations such as current contracts; operating budgets and actual results; line item expenses; labor agreements; subcontractor arrangements; maintenance, security and cleaning schedules; and garage staffing schedules and pay scales; the City asks that bidders rely on the information already included in the RFP where required as well as on their own experience and expertise operating and managing parking facilities. Proposals should treat Section I.D of the RFP as a guide to structuring their Budget proposal.
- 5) Question: Please clarify the request to include the management fee in the budget. It is defined in the RFP that there is a set management fee so what is the management fee that

is requested to be included in the budget (page 17 of the RFP)? [Also], with such a low management fee, shouldn't the incentive fee be negotiated before the contract is awarded?

Answer: Section II. C. Budget, Item 1 on p.17 of the RFP is hereby amended to read as follows: Management and Incentive Fees – 2 pages allowed. The Contractor or Joint Venture will be compensated by a combination of a set Management Fee and performance-based Incentive Fees (described elsewhere in the RFP). Proposals must include a pro-forma budget that takes into consideration both of these fees projected out over a five year period. The City has set not to exceed rates for the Management Fee (see 3. above) and proposed percentages for the Net Income Incentive Fee and a dollar amount for the Customer Service Incentive Fee (see pp.8-10 and Appendix B, Exhibit A, pp.5-6). The pro-forma should assume a first year combined "Target" of \$4,000,000 and be similar in form to the table found on p.5 of Exhibit A with the addition of columns for Management Fees, Customer Service Incentive Fees and Total Compensation Earned. If the pro-forma uses percentages, dollar amounts or assumptions other than those proposed by the City in the RFP, then the bidder should use the additional page to explain or defend any proposed changes.

- 6) Question: Given the fact that each facility is different and its management requirements vary (i.e. hours and days of operation, special events, transient utilization, valet operations, etc.,) shouldn't the management fee be weighted according to the complexity of each facility's operation?

Answer: The Management Fee has been revised with this point in mind. See (2) above.

- 7) Question: Is the management fee really supposed to include overhead? What is included as overhead?

Answer: Here, "overhead" refers to the "Non-Reimbursable Expenses" listed on pp.7-8 of the RFP.

- 8) Question: Concerning Section 15 of the sample contract; see Section 7.1 of Exhibit A. Would the City consider removing the "sole negligence" language from the indemnification provision? Will the exclusionary clause carve out the City's negligence, whether active or passive?

Answer: Proposers are advised to carefully review the documents provided in Appendix B of the RFP. The City is not inclined to make any changes to the contract language. However, the City will consider such requests during negotiations.

- 9) Question: Concerning Section 5.2 of Exhibit A. Would the City consider removing "invitees" from the list, because this includes a broad category of people whom Contractor does not necessarily control? Would the City add a carve-out for normal leakage and emissions of oil and other lubricants from motor vehicles?

Answer: Again, the City is not inclined to make any changes to the contract language. However, the City will consider such requests during negotiations.

- 10) Question: Still concerning Section 5.2 of Exhibit A. Further, the City reserves the right to defend or settle any claim subject to Contractor's indemnification obligation. Please



clarify if the City may do so only at its own expense, and that we will defend the City for such claims with counsel chosen by our insurer and reasonably approved by the City.

Answer: Once again, the City is not inclined to make any changes to the contract language. However, the City has been known to change indemnification terms during negotiations.

- 11) Question: Would the City consider reducing the time required for record keeping to 1 or 2 years after termination of the agreement?

Answer: No. The recording keeping requirements are consistent with the City's obligations to other agencies and authorities; as such, this matter is not subject to negotiation or change.

- 12) Question: Concerning Section 5(e), 13 of the Sample contract. If Contractor will be required to provide equipment or make other capital expenditures, would the City agree to fully reimburse all unamortized costs in the event of early termination for any reason? The City requires that title to all property and equipment acquired by Contractor should vest in them upon expiration or termination of the agreement; this should be subject to Contractor's security interest.

Answer: The City is not inclined to make any changes to the contract language. However, the City will consider such requests during negotiations.

- 13) Question: Concerning Page 5, Section 1(C) of the RFP materials; see also Section 20 of the Sample contract; Sections 10-12 of Exhibit A. Would the City consider granting Contractor reciprocal termination rights?

Answer: The City is not inclined to make any changes to the contract language. However, the City will consider such requests during negotiations.

- 14) Question: Sample contract states that the Living Wage is \$11.70 with benefits and \$13.45 without benefits. Confirm that the Oakland Living Wage is now \$11.96 with health benefits and \$13.75 with benefits.

Answer: The Sample Agreement and Exhibits will be updated to reflect current minimums and applicable standards as required during negotiations. Concerning the recent increase in the City's Living Wage ordinance, please refer to the bulletin found at the following link: [www2.oaklandnet.com/w/DOWD009082](http://www2.oaklandnet.com/w/DOWD009082)

- 15) Question: What is the purpose of the \$200,000 deposit if the City is getting the money deposited in their own account each day? Could a performance bond be used in lieu of the \$200,000 deposit? This equates to two years of the management fee.

Answer: This deposit insures that the City has sufficient funds in the event the Contractor fails to meet its obligations such as those described in Section IV.S. Prompt Payment Requirements (p.32).

- 16) Question: Please confirm that the [\$200,000] Security Deposit can be satisfied with an annually renewable performance bond. Sample agreement Section 6.4 allows for the use of a bond but page 20 of RFP says it must be a cashier's check.

Answer: Following Section 6.4 of the Sample Agreement, a performance bond is acceptable. The paragraph on page 20 of the RFP should have listed this option.

17) Question: Can the city provide the preferred form and wording of the Bid Bond and final bond?

Answer: Yes, the preferred form is provided as an attachment to this addendum.

18) Question: Contractor must provide a \$750,000 irrevocable letter of credit, line of credit, or qualified loan commitment. Would the City consider a performance bond in lieu of the LOC?

Answer: No.

19) Question: Will the City agree to refund the security in the event the parties cannot reach an agreement after negotiating in good faith?

Answer: Yes, the City would likely refund the proposal security under these circumstances.

20) Question: Is the security bond due with the proposal?

Answer: Yes, a \$10,000 proposal security must accompany all proposals.

21) Question: If awarded, is the money returned?

Answer: No, if awarded, the security is retained and applied toward the \$200,000 security required for the successful bidder.

22) Question: How long will the City keep the bond/cashier's check if the Contractor is not awarded? When are the Contractors rejected?

Answer: If a proposal is deemed non-responsive, then the deposit will be returned promptly. Otherwise, the City will return the remaining security deposits after it has successfully executed an agreement with the winning Contractor. In terms of timing, please see p.27 of the RFP for a schedule of important dates.

23) Question: Would the City represent that it has appropriated sufficient funds for the initial term and to make any required pay-off with regard to the capital expenditures?

Answer: Yes, recognizing that the City Council must approve Contract award together with the necessary Operating and Capital budgets prior to the execution of the agreement.

24) Question: Will personnel wages be billed back using a calculated hourly bill rate or at the actual hourly pay rate plus related payroll expenses?

Answer: The City is receptive to both methods, so bidders should choose one and explain their decision.

25) Question: Will the City agree that such capital improvements or long-term and extraordinary maintenance and repairs will be performed only by written agreement of the parties? Will Contractor be able to earn an additional fee for such work?

Answer: See Exhibit D, Section 6.1 Annual Budget -- formal submission, review and approval process for operating and capital budgets. Any fees or expenses associated with capital improvements would be subject to the same process.

26) Question: Please provide a format for the locations by location budget so that comparing operator to operator is succinct.

Answer: Again, proposals should treat Section I.D of the RFP as a guide to structuring their Budget proposal.

27) Question: Should the budgets requested be submitted by property (9 individual budgets) or as a single all inclusive rollup?

Answer: Bidders can use up to 6 pages to present their proposed budget.

28) Question: Would the City agree to automatic annual increases of the fee at the beginning of every contract year for the term of the agreement?

Answer: Not likely, but this and other issues related to compensation will be negotiated with the winning Contractor.

29) Question: What specific positions are included in the reimbursed personnel salaries/wages? Is the back office administration reimbursed? Are the dedicated account representative, assistant manager, and/or supervisor reimbursed?

Answer: Proposals should answer these and related questions by referring to information provided throughout the RFP and to the details found in Section I.D.2 in particular.

30) Question: Is there a certain staffing expectation as far as managers and admin staff?

Answer: Bidders are required to submit a Staffing & Operation Plan as part of their proposals. The City's expectations are expressed under this heading on pp.14-5 of the RFP.

31) Question: Is worker's compensation reimbursable? Is holiday, sick and vacation time reimbursable? Are health and welfare benefits reimbursable?

Answer: Yes, subject to approval, these are reimbursable expenses.

32) Question: Is the Internet connection reimbursable?

Answer: Not likely, but under certain circumstances it may be considered a Utility subject to review and approval.

33) Question: We understand uniform cleaning is included, but is the cost of the uniforms reimbursable?

Answer: Again, not likely, but subject review and approval.

34) Question: How much personnel training time is reimbursed?

Answer: The City seeks proposals that plan and budget for training deemed necessary and sufficient to meet or exceed established performance goals.

- 35) Question: Invoicing monthly statements for 3,634 parking spaces will require a full time staff member that is dedicated only to this task. If invoicing monthly parking statements is not a reimbursable expense and must be covered in the management fee, the result will be little to no profit for the operator. Is the city's intent to not allow for this personnel expense to be reimbursed?

Answer: "Invoicing monthly statements" is currently listed as a non-reimbursable expense, together with other internal accounting services, in the RFP (p.8). However, bidders are welcome to make the case that this activity constitutes a direct operating expense and, therefore, subject to reimbursement.

- 36) Question: What overhead costs are included? Can you please elaborate?

Answer: See pp.6-7 of RFP; any further elaboration will take place during negotiations.

- 37) Question: What are payment terms for reimbursement of paid expenses to operator? Net 30?

Answer: The City does not offer terms.

- 38) Question: Is the cost of the Operations Manager included as a reimbursable operating expense?

Answer: Yes.

- 39) Question: Will the City fully reimburse Contractor for its costs upon completion of [Capital improvement] projects, or is Contractor expected to finance the improvements?

Answer: Both of these alternatives are possible. Contractors or Joint Ventures with experience securing and managing Financing for Capital Improvements are encouraged to mention as much in their Capital Improvement Plans.

- 40) Question: Contractor may propose a valet-assisted operation rather than self-park. Will the costs of providing valet-assist services be reimbursed as operating expenses by the City?

Answer: Yes, subject to review and approval.

- 41) Question: Concerning Page 34, Section IV(11) of the RFP materials. Typically, ADA compliance is the facility owner's responsibility, especially since it is challenging to budget for this responsibility if capital improvements are ultimately necessary to comply. Is this obligation negotiable?

Answer: The City is not at liberty to negotiate these obligations as they relate to laws and regulations outside of its control.

- 42) Question: Will the selection panel that reviews the written proposals be the same that conducts the oral interviews?

Answer: Yes.

43) Will the points for the written proposals be determined prior to the oral interview?

Answer: Yes.

44) Will the points scored [on the written proposals] be made available online prior to the oral interview?

Answer: No, only the names of the finalists, but not their scores, will be published online prior to the oral interviews.

45) Question: Some of the addresses for the various facilities appear to be incorrect on page 3 of 39. For example, there is no garage at 1200 Harrison Street. Please provide a correct site address for each facility.

Answer: The garage referred to as "1200 Harrison" is part of the Mar Park Apartment complex. The entrance to the garage is on the southeast corner of Harrison and 12th St. Follow this link to see a map of City of Oakland off-street parking facilities: <http://goo.gl/maps/4ZSnU>.

46) Question: We calculate liability insurance based on revenues, what are the total revenues for each the 9 parking properties?

Answer: For this and other calculations, proposals should rely on the revenue estimates included in their budget.

47) Question: Schedule Q – Section a. iv requires Errors and Omissions Insurance. This is not typical for parking operations contracts. Can this requirement be deleted?

Answer: The City has waived this requirement in the past and a request to waive it in this case has been submitted to the City's Risk Manager. Proposals can disregard this insurance requirement, although the City reserves the right to direct the winning Contractor at a later date to secure this kind of insurance (which, in any event, would be considered a reimbursable expense).

48) Question: Would the City agree to reimburse all of Contractor's insurance costs? Contractor does not charge site-specific premiums or deductibles for insurance.

Answer: In order to be responsive, proposals must meet the minimum insurance requirements detailed in the RFP; "contract specific insurance premiums" are considered a reimbursable expense (p.7), subject to review and approval.

49) Question: Insurance requirements – There is a discrepancy in Exhibit A on page 12 of the sample agreement. The estimated value of the property does not tie to the number of parking stalls. Please clarify the requirements in this section.

Answer: The estimated value is:  $3,411 \times \$37,000 = \$126,207,000$ . While the number in the RFP is correctly reported "\$126,207,000", the spelled out amount must be revised from "one hundred seventy nine million" to "one hundred twenty-six million two hundred and seven thousand".

50) There are insurance requirements in Exhibit A and Schedule Q which conflict. Please advise which insurance requirements should be followed.

Answer: In the event of any conflict between two stated insurance requirements, bidders should assume the City will requirement the higher or greater standard.

51) Question: Concerning Exhibit A, pg. 7, section 3.2. Does this section mean that there should be an on-site Operations Manager at each facility?

Answer: No. It means that for those facilities that are staffed, one employee will always be designated the Acting Operations Manager.

52) Question: Please clarify the role of the operations manager: Is the contractor to provide a full time, dedicated operations manager or can his/her duties be shared by other facilities, not part of this package?

Answer: The City only requires that the Operations Manager not have a conflict of interest. Otherwise, Contractors are invited to make the case one way or another.

53) Question: What is the required LBE participation percentage for this contract?

Answer: 50%.

54) Question: Will the bidder need to be 50% L/SLEB?

Answer: No, if the program does not apply then preference points will be not be awarded.

55) Question: If the answer is no [to the previous question], will every bidder be awarded the 50% L/SLEB advantage points?

Answer: The procedure for awarding preference points is described in Section IV.6, pp.39-40 of the RFP. Further explanation is provided in the full program description available by following the link provided at the top of p.39 of the RFP. If further clarification is required, please contact Vivian Inman at [vinman@oaklandnet.com](mailto:vinman@oaklandnet.com) or (510) 238-6261.

56) Question: Is the successful bidder required to keep all current employees?

Answer: No.

57) Question: Does Franklin 88 require 24/7 staffing?

Answer: Yes, according to Appendix D, p.6 this facility is operating 24/7.

58) Question: What is the staffing level you want included in the budget? Exhibit A, pg 6, section 3 states that "Contractor shall staff each Facility with at least one employee during all hours of operation..." Is this the assumption that we should use when completing the budget?

Answer: The City expects Contractors to base proposals on an estimate of the necessary and sufficient staffing requirements to meet all operating objectives as described throughout the RFP. The special operating conditions for the Harrison St Garage on p. 4

of Appendix D is amended to include the fact that staff are not on-site during all hours of operation. As such, Exhibit A, pg 6, section 3 and other similar passages in the RFP should be understood as applying to those facilities that are not equipped to be operated and managed by staff working remotely.

- 59) Question: Are any of these employees covered under a collective bargaining agreement? If so, please identify specific garages and employee position, by number, type and wage rate.

Answer: Yes, Franklin 88 employees are covered. Contractor can negotiate specifics later.

- 60) Question: Which locations is the operator responsible for elevator maintenance? Is there a long term contract in place? If so please provide the cost.

Answer: The Contractor will be responsible for managing all the professional services related to a given facility, including those services necessary for elevator maintenance. Refer to Appendix D, p.3. Bidders will be responsible for entering into new agreements with qualify subcontractors (preferably with those that are LBE certified-firms).

- 61) Question: In the RFP on page 16 of 39, there is a requirement for a Capital Improvements Plan. Are we required to provide a Capital Improvements Plan for each garage? Are capital expenses reimbursable?

Answer: The RFP does not require that a *separate* plan be provided for each garage. Those capital expenses that have been approved will be reimbursed.

- 62) Question: Will the City consider providing an operating advance?

Answer: No

- 63) Question: Will the successful bidder be required to deposit funds into operator owned bank accounts or city owned bank accounts?

Answer: Yes.

- 64) Question: Please clarify who will be responsible for the credit card processing and be the holder of the merchant IDs, the city or the operator? Are the credit card related MiDs/TiDs currently in place owned by the operator or owned by the city?

Answer: The City will provide merchants account and all card processing equipment linked to the City's accounts.

- 65) Question: Please provide a list, by garage, of all maintenance equipment the City will provide to the selected contractor.

~~Answer: Bidders should assume that there is no such equipment.~~

- 66) Question: Are any vehicles specifically required in order for the contractor to operate and maintain the group of garages?

Answer: No.

67) Question: Is there an expectation that bus service may be added to the scope of the contract? Is experience with bus/shuttle service a requirement of this RFP?

Answer: Bus service is not a requirement for this RFP.

68) Question: Are the parking and revenue control systems covered under service agreements? If so, please provide monthly cost by garage.

Answer: A service agreement will be in place for the six facilities equipped with the S&B PARCS at no cost to the Contractor. That said, proposals should assume that there will be occasional costs associated with operating and maintaining the various PARC systems.

69) Question: Are the garages currently being power swept? On what frequency? Are pressure washing services and sweeping currently performed by an outside contractor and if so how often and what is the cost?

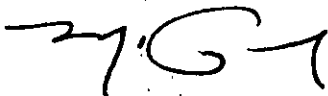
Answer: See Exhibits B and C of Appendix B for Maintenance and Cleaning requirements. Current costs are not available.

70) Question: Are there currently any 3rd party securities or maintenance companies being used in any of the 9 facilities now? If so, which companies and what specific facility (s)? Please also provide their current schedules.

Answer: Details about current arrangements will not be provided. The City encourages or, in certain cases, requires Primes to work with certified L/SLBE firms for services that can be subcontracted.

**IMPORTANT:** You must acknowledge this Addendum in your Transmittal Letter of your Proposal or SOQ, or it may be deemed non-responsive.

Sincerely,



Michael P. Ford  
Project Manager  
Transportation Services Division  
(510) 238-7670, mford@oaklandnet.com



NOTE: BIDDER MUST USE THIS FORM

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS:

THAT \_\_\_\_\_ (hereinafter called the Principal), as Principal and \_\_\_\_\_ a corporation organized and doing business under and by virtue of the laws of the State of \_\_\_\_\_, and duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as Surety, are held and firmly bound unto the City of Oakland, a municipal corporation, (hereinafter called the Obligee) in the just and full sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States of America, for the payment of which, well and truly to be made, we hereby bind ourselves and each of our successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, WHEREAS, the above bounden Principal as aforesaid, is about to hand in and submit the Obligee a bid or proposal for \_\_\_\_\_, in accordance with the plans and specifications filed in the office of the Obligee and under the Notice To Bidders therefore.

NOW, THEREFORE, if the bid or proposal as submitted by the said Principal shall be accepted, and the contract for such work or supplies be awarded to the Principal, and the said Principal shall fail, neglect or refuse to enter into a contract to perform said work or deliver said supplies, and furnish good and sufficient bond therefore, then the amount of this bond shall be declared to be forfeited to said Obligee as liquidated damages, it being agreed that said Obligee will suffer damages as a result of such failure, neglect or refusal of the Principal and that such damages are and will continue to be, impracticable and extremely difficult to determine.

IN WITNESS WHEREOF, said Principal and said Surety have caused these presents to be duly signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2013.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
By \_\_\_\_\_  
Attorney-in-Fact

(Acknowledgment of Surety is required.  
See reverse side.)

# ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_  
(Insert name and title of the Officer)

personally appeared \_\_\_\_\_, who proved to  
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the instrument within and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the  
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true  
and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



		<b>BID BOND to CITY OF OAKLAND A Municipal Corporation</b>	<b>Dated</b> _____, 2013	
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CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 4314 • OAKLAND, CALIFORNIA 94612  
Public Works Agency (510) 238-7270  
Contract Services FAX (510) 238-2346  
TDD (510) 238-3254

ADDENDUM NO. 2

July 19, 2013

**Subject:** RFP for Operation & Management of Parking Facilities

**To:** All Prospective Bidders

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The clarifications, additions and/or deletions contained in this **ADDENDUM** shall be made a part of the contract documents (plans, specifications, etc.) for the above-referenced project, and shall be subject to all applicable requirements there-in, as if originally shown and/or specified. The contract documents are revised as follows:

- 1) The Schedule Q attached to this addendum and dated 7/19/2013 replaces the original Schedule Q of Appendix C in its entirety.

**IMPORTANT:** You must acknowledge this Addendum in your Transmittal Letter of your Proposal or SOQ, or it may be deemed non-responsive.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Ford".

Michael P. Ford  
Project Manager  
Transportation Services Division  
(510) 238-7670, mford@oaklandnet.com

## Schedule Q

### **INSURANCE REQUIREMENTS For Parking Garage Agreements**

a. General Liability, Automobile, Worker's Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. Commercial General Liability Insurance, shall cover bodily injury, property damage and personal injury liability arising from premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)
  - A. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents and employees and volunteers shall be primary insurance. Any other insurance available to the City Councilmembers, directors, officers, agents and employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement).
  - B. Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$5,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ii. Automobile Liability Insurance. Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.
- iii. Garage Liability Coverage, including liability coverage for Garage Operations to apply on a direct primary basis Combined single limit per occurrence shall not be less than \$2,000,000. Coverage to include liability,

medical payments and auto physical damage arising out of the operation of the parking facility. May include the general liability requirement identified above.

- iv. **Garagekeepers' Legal Liability Coverage.** Contractor shall also include coverage for "autos left for service, repair, storage or safekeeping". Combined single limit per occurrence shall not be less than \$2,000,000.
- v. **Fiduciary/Crime Liability Coverage.** Contractor shall also include coverage for fiduciary exposures including employee crime and theft in the amount of \$1,000,000 naming the City of Oakland as named insured. In lieu of an insurance policy, Contractor may produce a fiduciary bond for \$1,000,000 made payable to the City of Oakland.
- vi. **Worker's Compensation insurance** as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, \$1,000,000 each employee bodily injury by disease. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. **Insured Status (Additional Insured):** Contractor shall provide insured status using ISO endorsement CG 20 10 or its equivalent naming the City of Oakland, its Councilmembers, directors, officers, agents and employees and volunteers as insured's in the Comprehensive Commercial General Liability policy. If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on a CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- ii. **Cancellation Notice:** 30-day prior written notice of termination or material change in coverage and 10-day prior written notice of cancellation for non-payment;

- iii. The Workers Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the contractor, its employees, agents and subcontractors.
- iv. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- v. Insurer shall carry a insurance from an admitted company with a Best Rating of A VII or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insured's under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

- 1) CONTRACTOR shall require General Liability and Property Damage insurance for any vendor or concessionaire conducting business at CONTRACTOR on a continuing or regular basis. CONTRACTOR shall require insurance limits in the minimum amount of \$2 million dollars for all major vendors or concessionaires unless an exception has been granted by the City's Risk Manager.
- 2) CONTRACTOR shall impose upon all building contractors performing work at facility the requirements concerning insurance and indemnification. The required insurance and indemnification limits for building contractors are set forth in the City of Oakland Standard Specifications for Public Works Construction. In the event there are changes or amendments made to the Standard Specifications for Public Works Construction, the most current, updated version shall be in effect.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors and employees for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

j. Higher Limits of Insurance

If the contractor maintains higher limits than the minimums shown above, the City shall be entitled to coverage for the higher limits maintained by the contractor.

## **Attachment B**

Letter of Protest from Douglas Parking, LLC





Douglas Parking LLC  
1721 Webster Street  
Oakland, CA 94612  
510.444.7412

November 7, 2013

Mr. Michael Ford, Project Manager  
City of Oakland  
Public Works Agency  
250 Frank H. Ogawa Plaza, Suite 4344  
Oakland, CA 94612-2033

Dear Mr. Ford,

We have received your November 1, 2013 letter and associated materials outlining the staff's pending recommendation to City Council that Standard Parking of Chicago be awarded the contract to manage the City's parking facilities.

Thank you for giving us this opportunity to present our case of why we disagree with this recommendation. We know your attempt was to be fair to all parties. However, it appears that in your attempt to finish this process within a tight deadline presented to you multiple missteps took place. These cumulative errors have resulted in a panel recommendation that was not fair to the bidders and clearly not in the City's best interest.

We understand that you will be forwarding this protest letter to the Public Works Committee for their review on November 12, 2013.

Please realize that working with you personally through this process has been pleasant and transparent. At no time have we interpreted you to be for or against any bidder on this contract.

After much reflection and review of the process we feel strongly that we need to press our case on many questionable items and those that we perceive to be unfair. We are breaking down our concerns into different parts of the process.

### The Request for Proposal

A very large part of the problem with the RFP was that it asked for a budget but did not give staffing levels. This prompted bidders to consider eliminating all or much of the staff since most of the garages are set up with automated parking equipment. The City was asked for clarification and we were told "*Bidders are required to submit a Staffing & Operation Plan as part of their*

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[www.douglasparking.com](http://www.douglasparking.com)

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California Colorado Louisiana Nevada North Carolina Oregon Utah West Virginia

proposal " In our proposal, we kept the staffing the same knowing that the City did not want low wage earning employees fired just because a contract went out to bid.

Further, by operating these garages, we know that you cannot run these facilities without staff, even though the installed parking equipment enables the garages to run without staff. In particular, Clay Street Garage requires a lot of customer service. Not specifying the actual labor needed put us, the incumbent, at a huge disadvantage as we know staff is required while the others likely eliminated much of the staff expense. Telhngly, Douglas Parking scored very low in this section—presumably because we did not propose that the staffing be cut.

In addition, the City failed to correctly answer questions asked by the contractors and even ignored some of the questions we asked; a look at the Q&A provided by the city will make this clear. For example,

63) Question: Will the successful bidder be required to deposit funds into operator owned bank accounts or city owned bank accounts?

Answer: Yes.

#### The Evaluation Panel—conflicts of interest and fairness of familiarity

The review panel consisted of three panelists from the public sector. One from San Jose, one from San Francisco, and one from Oakland. One of the panelists currently works with one of the parking operators in San Jose. Another panelist until recently worked directly for each of the parking operators on the other bidding team. The third panelist, although from Oakland, has never worked directly with Douglas Parking. It was severely unfair that two of the parking companies had panelists that knew them well while Douglas Parking had no one on the panel who had ever worked directly with the company.

#### Issues With the Point Scoring Rubric

1. The scoring criteria heavily favored extremely large companies and put a smaller local company at a severe disadvantage. Please note, of the 50 separate scoring criteria:
  - a. 24 favored a LARGE company
  - b. 24 were NEUTRAL
  - c. 1 favored a LOCAL company
  - d. 1 was nonsensical "*Lower costs clearly justified*" whatever that means.
  
2. There were 11 mathematical mistakes on the scoring breakdown.

3. For those 34 categories where Douglas Parking scored lower than Standard Parking, the average point total deficit for each item averages .58 points. This is a miniscule difference but it resulted in a third place finish.
4. Douglas Parking scored the same or higher point totals than Standard Parking in 16 categories. Ironically, many of these were in the area of Management Approach, particularly in the areas of Staffing, Local/Home Office relationship, and Operations. Further, in the Oral Interview, Douglas received the highest rating for the On-Site Manager/Team. Aren't all these things the most important thing the City should be looking for? It is easy for a big national company in Chicago or Vancouver to prepare a proposal and put all their experience from around the country in a slick written proposal. What really matters is what is happening on the ground, in Oakland. What matters is what the proven team, in Oakland, is capable of doing. What a parking operator claims to have done around the country is not directly relevant in Oakland.
5. Local/Small Local Business Enterprise Preference Points. It is hard to believe that Standard Parking, a publicly traded company headquartered in Chicago, can receive more local/small business preference points than a private, family-owned, company that has been headquartered in Oakland since 1930 and is subcontracting to two certified SLBEs. This is preposterous. The points need to be recalculated and/or explained.
6. Please note the following additional scoring inconsistencies:
  - o Qualifications & Experience
    - Experience with public agencies. Big national companies are going to have more experience since they operate for more public agencies around the country. However, Douglas Parking has 20+ years with the City of Oakland locations and has been based in the City of Oakland for 83 years. How could we possibly get the lowest score? Our experience, in Oakland and with the City of Oakland itself, should be the most relevant experience.
    - Fit between experience & current scope. We have 20+ years of experience with the current scope of operations. How did we score less than Standard Parking who has practically no experience with the exact current scope of operations?
    - PARCS equipment. Douglas Parking received the maximum points (2) for POF experience but 1.7 for PARCS. POF and PARCS are the exact same thing—they are interchangeable. How can you have less experience in one and more in the other? In addition, the scoring rubric has two line items for PARCS and we didn't get the same score in each. How can we have different scores for the exact same item?
    - Years of experience. We have been in business since 1930. Douglas Parking has been in business longer than all the other companies yet we received fewer points than Standard Parking. How is this so?

- **References.** The local operator is automatically at a disadvantage because they will not have the municipal contracts all over the country.
- **Lawsuits.** Standard Parking has had serious lawsuits that were not mentioned. A quick Google search found two serious lawsuits related to municipal contracts:
  - <http://www.startribune.com/business/39470397.html>
  - [http://articles.sun-sentinel.com/2012-12-15/news/fl-million-dollar-whistleblower-20121211\\_1\\_bill-bodenhamer-broward-county-accountant](http://articles.sun-sentinel.com/2012-12-15/news/fl-million-dollar-whistleblower-20121211_1_bill-bodenhamer-broward-county-accountant) (this one is Central Parking, who was purchased by Standard Parking)
  - All three of the other bidders have a pending legal action from Teamsters Local 727 in Chicago.
  - Douglas Parking has no lawsuits against it by a public agency or any unions.
- **Staffing & Operation**
  - Presents plan to effectively manage & operate the facilities. Douglas Parking scored 3.3 (out of 6). Imperial Parking and Standard Parking scored 4.3. Our staffing and marketing plans are based upon first-hand knowledge and what it really takes to successfully operate these garages along with the city's current staffing requests. The two non-local panelists are not intimately familiar with the garages or the community. How could we score less than the others on this? Also, we scored very well in the other subcategories of this section yet our overall plan is not effective? This doesn't make sense.
  - **Operations/Transition.** We are the current operator of 6 out of 8 facilities in this contract. We presented a detailed transition plan (which would not even be necessary for the 6 facilities we already manage) and it is unclear why we did not receive the maximum points for this category.
  - **Management Fee.** The exact Management fee was specified in the RFP. We did not deviate from what was specified. Yet we have received fewer points than the others. How is this so?

**Additional Detailed Scoring Inconsistencies Between the Written Proposal and Scoring Rubric**

- **Qualifications and Experience**  
Pg. 13 of 39 in RFP *"The Contractor will be scored on experience in the parking operation and management field, and specifically in operations with similar financing, ownership and operational requirements."*  
- The scoring was actually experience with public agencies, evidence of new business attracted, and the fit between experience and current scope. With a page limitation on our response, the focus was on what the City said would be scored rather than the other scoring criteria they used and didn't specify. We are the current operator of the majority of this contract and have been in the parking operation and management business for 83

years – with the criteria stated in the RFP we should have received a higher score than 4.7 out of 8.

- **Productivity Software**

We received a low score for this item, 0.2 of 1.0, and it is unclear why. From the RFP, pg. 13 of 39, "*(explain) any use of spreadsheet, revenue and data reporting, and information retrieval and organization software including, but not limited to, Microsoft's Excel and PowerPoint, and other financial reporting software*". The criteria they scored was "productivity software" which was never specifically mentioned in the RFP.

From our proposal, page 9, "Our executive personnel and administrative staff are experienced in several different software systems including the Microsoft Office Suite (Microsoft Excel, Power Point, and Microsoft Word), Adobe Creative Suite (Adobe InDesign, Adobe Photoshop, and Adobe Illustrator), and Integrapark's PARIS software. PARIS, the Parker Accounts Receivable Information System, is the premier billing and accounts receivables system for people who own or operate parking facilities with monthly contract parking, permits, or billed validation. We have experience with online reservations and assisted in the development of QP Quick Pay, a smart phone app that can allow people to pay for parking using GPS technology."

- **Experience with other services**

We received a 1.2 out of 2 for this item. First, it should be noted that the RFP incorrectly asked for information about bus services on pg. 14 of 39, and we were later told by the city in the response to the contractor's questions that it was not a requirement.

Secondly, we clearly expressed our experience in other services.

From page 18 of our proposal, # 7. "Other Services"

Douglas Parking goes beyond cm contracted work for the City of Oakland. Our downtown headquarters is the only location for the public to return the parking boots issued by the City. We field public complaints regarding the parking boots and associated fines for the City and provide a space for the boots to be stored until the Oakland Police Department gathers them for reuse. Additionally, we provide maintenance on other City parking lots outside of the contracted locations and handle minor repairs to the City's S&B automated equipment without charge.

Douglas Parking has experience in every type of parking operation. We manage several valet assisted parking facilities in the Bay Area, with 80 valet attendants and 9 Area Managers cross-trained to provide staffing coverage and management support quickly and seamlessly in the event of an emergency or employee call-out. We have a wealth of parking knowledge from practical operational issues to technical insight that can be employed to strengthen the City of Oakland's services. We even offer consulting services and have been hired by property owners and prospective buyers to audit current or prospective parking operations.

Douglas Parking has a tremendous amount of experience with special event parking. Whether it's directing the flow of traffic, guiding guests to designated parking areas, collecting fees, valet parking, or shuttling, we have the ability to handle these high volume events with safety and professionalism. We operate the parking for the San Jose Earthquakes (Major League Soccer) and also collect parking fees for sporting events, concerts, theatrical performances, lectures, etc. at multiple locations throughout the Bay Area and United States. We also offer valet parking and shuttle services for special events at private residences, restaurants, and event venues all throughout the Bay Area and in Denver, CO, Las Vegas, NV, and Shreveport, LA. We will make sure that City parking staff will be trained on how to efficiently man these events and deliver the outstanding customer service that Douglas Parking is known for."

Flexible pricing strategies is an item the city scored, yet in the RFP on page 5 of 39 it states, "*The City has the sole authority to set and to change parking rates for the parking facilities*". The reality has been that each and every year of the contract we have formally presented suggestions on pricing changes at various locations.

- **Overall Organization and Clarity of Proposal**  
We received 2.3 out of 3 yet we followed exactly all guidelines in the RFP. Our proposal strictly followed the outline, required content, and page limitations presented in Section II.C.
- **Marketing Plan**  
For the "reflects understanding of local market segments" item we received a 2.8 of 5. We are based in Oakland, a short walk away from these facilities, and we addressed in detail our understanding of the local market.

From pg. 59 of our proposal, "Oakland Marketing Segments"  
Our marketing strategies take into account the different marketing segments that use the City of Oakland garages. They are largely used by the business community during the regular work week (Monday-Friday). We would hope to expand on this market and increase garage patronage on the nights and weekends, for special events downtown (concerts, festivals, etc.) and the growing downtown and uptown residential and arts community. Because of our knowledge of downtown Oakland we are able to open locations and tweak hours in order to best serve these special events.

For years Downtown Oakland had a negative perception and was an unsafe place after sundown. This perception is changing as more people are moving to the area and trendy restaurants, art galleries, bars, and entertainment venues are creating a more active neighborhood. The increase of activity is transforming the public image. More people are venturing out in Oakland at night and our marketing plan will help raise awareness of their parking options."

For the "includes examples of successful marketing efforts" item, we received a 1.2 out of 3. Yet all of the strategies we included starting on page 54 of our proposal were real

examples of marketing strategies that work and have resulting in significant increases in income to the City, year after year.

- **Maintenance Plan**

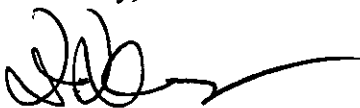
“Ability to effectively manage subcontractors” and “sound recommendations for additional equipment” were items evaluated in this section by the City, yet the RFP on page 15 of 39 says differently, *“The Contractor's Maintenance Plan will be evaluated based upon its overall strength, coherence, and probable success in maintaining first-class, clean, well-maintained and fully operational parking facilities at the lowest possible cost. The Maintenance Plan should also demonstrate knowledge of and ability to remove oil and grease spots on an on-going basis in conformance with the City's maintenance expectations, as set forth in the Agreement. Finally, the Maintenance Plan will be evaluated based upon how well it satisfies the needs of the parking facilities.”*

In summary, the RFP process heavily favored large, national companies. The local management team and its qualifications—the ones who are on the ground working for the City—did not receive equal weight. Second, the panelists had deep connections with two of the parking companies yet Douglas Parking had no one on the panel with direct knowledge of our capabilities. Finally, the point system contained many errors and the evaluation criteria often did not match what the RFP requested.

We respect and understand there has to be winners and losers in any bid process. However, the bid process has to be fair and not inherently favor firms with large national portfolios and work against a firm that has the most experience in and loyalty to Oakland.

We appreciate your time on this process and hope that the points in this letter will go toward a new evaluation that is fair for all parties.

Sincerely,



David Douglas

Douglas Parking LLC

Cc: Justin Montgomery

Chris McGougan

## **Attachment C**

Letter of Protest from Impark Pacific Parking, LLC



**KAY & MERKLE, LLP**  
ATTORNEYS AT LAW  
100 THE EMBARCADERO  
PENTHOUSE  
SAN FRANCISCO, CALIFORNIA 94105-1291

TELEPHONE: (415) 357-1200

FACSIMILE: (415) 512-9277

Steven Kay, Esq.  
skay@kmlsw100.com

November 7, 2013

**VIA HAND DELIVERY AND VIA E-MAIL**

**TO: mford@oaklandnet.com**

Mr. Michael Ford, Project Manager  
Transportation Services Division  
City of Oakland Public Works Agency  
250 Frank H. Ogawa Plaza, Suite 4344  
Oakland, California 94612-2033

Re: **Notice of Protest Re: Intent to Award Contract for  
Operation and Management of Parking Facilities**

Dear Mr. Frank:

This law firm represents Impark Pacific Parking, LLC. Impark Pacific Parking, LLC, hereby protests the City of Oakland, Public Works Department, Transportation Services Division's Intent to Award Contract for Operation and Management of Parking Facilities to Standard Parking Corporation. The basis of the Protest is that a member of the "Independent Panel" was not independent but was, in fact, a former employee of the joint venture partners of Impark Pacific Parking, LLC and was biased in his evaluation, leading to a downgrading of the evaluation of Impark Pacific Parking, LLC.

On November 1, 2013, the Transportation Services Division of the Public Works Agency of the City of Oakland issued its Notice of Intent to Award Contract for Operation and Management of Parking Facilities, by which it stated its intent to award a contract for operation and management of eight City-owned parking garages to Standard Parking Corporation, and its partners CMA Asset Management and Wellington Property Company. This protest goes to a conflict in the evaluation process.

The Request for Proposal states that "An appointed Selection Panel will review and score all Responsive Proposals, based on two categories: (1) Written Proposal (Up to 150 Points); and (2) Oral Interview/Presentation (Up to 50 Points)." During the Evaluation Process, it was discovered that one of the members of the Selection Panel was Mr. Rob Noiles, who was formerly an employee of Pacific Park Management. Mr. Noiles left the employ of Pacific Park

Mr. Michael Ford, Project Manager  
November 7, 2013  
Page 2

Management on October 31, 2012. Mr. Noiles has been known to have made less than favorable remarks about the management of Pacific Park Management following termination of his employment. That bias continues, and the evaluation process was therefore not independent.

The Agency Report refers to the Selection Committee as an "independent panel". The Agency Report states that "An independent panel consisting of two parking experts, one from San Francisco and another from the City of San Jose, and Aliza Gallo from the City of Oakland's Department of Economic and Workforce Development, was convened to carry out the RFP's evaluation process." Agency Report at page 4. The November 1, 2013 Notice of Intent refers to the Selection Committee as an "Independent Panel". Unfortunately the Selection Panel was not independent, due to the conflict created by Mr. Noiles' past association with Pacific Park Management.

The Selection Panel scored the applicants so that Standard Parking Corporation received a final score which was 8 points higher than Impark Pacific Parking LLC, out of a total possible score of 200 points. But for the conflict of interest presented by Mr. Noiles' bias, Impark Pacific Parking, LLC believes that it would have been scored higher and been awarded the bid.

Accordingly, Impark Pacific Parking, LLC protests that the Selection Committee did not meet the requirements of fairness and impartiality in the scoring of the applications, and that Impark Pacific Parking, LLC was downgraded due to the above described conflict.

Respectfully submitted,



Steven Kay

cc: Pacific Park Management

## **Attachment E**

Response to Letter of Protest from Impark Pacific Parking, LLC

# CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 4344 • OAKLAND, CA 94612-2033  
Public Works Agency (510) 238-3466  
Transportation Services Division FAX (510) 238-7415  
TDD (510) 238-3254

November 8, 2013

Mr. Steven Kay  
Kay & Merkle, LLP  
100 The Embarcadero Penthouse  
San Francisco, CA 94105-1291

**Re: Response Re: Notice of Protest Re: Intent to Award Contract  
for Operation and Management of Parking Facilities**

Dear Mr. Kay,

We are in receipt of your notice of protest on behalf of Impark Pacific Parking, LLC objecting to the City's Intent to Award Contract dated November 1, 2013.

Your letter questions the independence of Mr. Rob Noiles, one of three panelists making up the RFP's selection committee. The grounds of your protest appear to be two-fold: first, that Mr. Noiles was formerly employed by one of the joint venture partners of Impark Pacific Parking, LLC; and, second, that he was biased against your client in the evaluation process.

Concerning the first ground, the City does not question the fact that Mr. Noiles was a former employee for Pacific Park Management. However, this fact alone does not call into question his independence. On the contrary, it speaks to the fact that Mr. Noiles is an experienced parking professional.

Concerning the second ground, the City finds that your letter fails to "specify facts and evidence sufficient for the City to determine the validity of the Protest" as required by the RFP (p.28). You alleged that "Mr. Noiles has been known to have made less than favorable remarks about the management of Pacific Park Management following the termination of his employment. That bias continues, and the evaluation process was therefore not independent." This statement provides insufficient detail or facts regarding statements made by Mr. Noiles about Pacific Park Management, or his alleged bias, and as such, the City is not able to evaluate the validity of this ground.

For these reasons, the City has decided against your protest and affirms the results of the selection process as stated in its Notice of Intent to Award Contract.

Sincerely,

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Michael Ford  
Project Manager  
Transportation Services Division

## **Attachment D**

Response to Letter of Protest from Douglas Parking, LLC

# CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 4344 • OAKLAND, CA 94612-2033  
Public Works Agency (510) 238-3466  
Transportation Services Division FAX (510) 238-7415  
TDD (510) 238-3254

November 8, 2013

Mr. David Douglas  
Douglas Parking, LLC  
1721 Webster Street  
Oakland, CA 94612

**Re: Response Re: Notice of Protest Re: Intent to Award Contract  
for Operation and Management of Parking Facilities**

Dear Mr. Douglas,

We are in receipt of your notice of protest on behalf of your firm, Douglas Parking, LLC, objecting to the City's Intent to Award Contract dated November 1, 2013. Your letter identifies four areas of concern, which my response addresses in order.

First, concerning the Request for Proposal (RFP) itself you cite certain deficiencies and errors as grounds for protest. However, the RFP states that it is the proposing contractor's responsibility for "reviewing all portions of the RFP, the Agreement, and all forms and exhibits. Contractors must promptly notify the City in writing if the Contractor discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the City promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals" (p.21). City staff answered your questions seeking clarification about the RFP, as you noted in your protest letter. If staff's answers were inadequate, or if you needed further clarification, it was your responsibility to bring any such concerns to the City's attention prior to August 6, 2013.

Second, concerning the Evaluation Panel you cite "conflicts of interest and fairness of familiarity" as a basis for protest. As for any possible conflict of interest, your letter fails to "specify facts and evidence sufficient for the City to determine the validity of the Protest" as required by the RFP (p.28). Because your letter does not cite specific evidence that a panelist was biased, the City is not able to evaluate the validity of this basis for protest.

You also claim that it was unfair that the panel was more familiar with other bidders than it was with Douglas Parking. The RFP included no requirement that the panel have direct familiarity with any or all of the potential bidders. As such, this basis of protest is invalid because it fails to "cite the law, rule, local ordinance, procedure or RFP provision" that is implicated by your protest as required by the RFP (p.28).

Third, concerning the scoring rubric and the scores for individual items on the rubric you cite six separate issues as grounds for protest:

1. You state that “[t]he scoring criteria heavily favored extremely large companies and put a smaller local company at a disadvantage.” This allegation fails to “cite the law, rule, local ordinance, procedure or RFP provision on which such a protest is based” as required by the RFP.
2. You represent that there are “eleven mathematical mistakes on the scoring breakdown,” yet your letter fails to provide a single example. As such, this allegation fails to “specify facts and evidence sufficient for the City to determine the validity of the Protest” as required by the RFP, and the City is not able to determine the validity of this ground.
3. You note that the “average point total deficit” for each of the “34 categories where Douglas Parking scored lower than Standard Parking,” the first place finisher, “averages .58 points.”, This basis of protest fails to “cite the law, rule, local ordinance, procedure or RFP provision on which such a ground is based” as required by the RFP.
4. You argue that the sixteen categories in which Douglas Parking scored as well as or better than Standard Parking represent “the most important thing [sic] the City should be looking for.” This allegation fails to “cite the law, rule, local ordinance, procedure or RFP provision on which such a ground is based” as required by the RFP.
5. You question the preference points awarded by Contract Compliance for its Local/Small Local Business Enterprise program. In response, the Contract Compliance Officer assigned to this RFP offers the following explanation: “Standard Parking has been located in the City of Oakland since 1987 and Douglas Parking has been here since 1930 - both firms received the same preference points of 2.5 which is the maximum a firm can receive for years in Oakland. Douglas Parking received 2 points for its Oakland resident workforce, which equates to 25% - 49% of its workforce being Oakland residents and Standard received 3 points, 50% - 74% Oakland resident workforce.”
6. You question the Panel’s scores for a number of items under the headings of “Qualifications & Experience” and “Staffing & Operation.” In every case, your letter fails to cite the law, rule, local ordinance, procedure or RFP provision on which such a protest is based.

Finally, concerning other items under the headings “Qualifications and Experience,” “Productivity Software,” “Experience with Other Services,” “Overall Organizations and Clarity of Proposal,” “Marketing Plan” and “Maintenance Plan” you question the Panel’s scores. Your letter again fails to cite the law, rule, local ordinance, procedure or RFP provision on which such a protest is based.

For the reasons provided above, the City has decided against your protest and affirms the results of the selection process as stated in its Notice of Intent to Award Contract dated November 1, 2013.

Sincerely,

---

Michael Ford  
Project Manager  
Transportation Services Division



# **Attachment F**

Scoring Rubric with Selection Panel Results

parking facilities rfp\_written and oral scoring rubric - Written Proposal

ITEM	Points	DP	IPP	LAZ	SP
<b>Executive Summary (required but not scored) - 2 page maximum</b>	R/N	R	R	R	R
Provides summary description of contractor (experience, ownership structure, names of owners, ability to provide services)	R/N	R	R	R	R
Signed by authorized person(s)	R/N	R	R	R	R
<b>Qualifications and Experience (35 points max) - 15 pages maximum</b>	<b>35</b>	<b>20.0</b>	<b>25.2</b>	<b>26.8</b>	<b>28.8</b>
Detailed description of experience in off-street parking over the past three years					
Experience with public agencies	2	1.2	1.7	1.7	2.0
Evidence of new business attracted (e.g., incentive fees earned)	3	1.3	2.0	2.3	1.2
Fit between experience and current scope of services	3	2.2	2.0	2.2	2.7
<b>Parking and business technologies</b>					
PARCS	2	1.7	1.7	2.0	2.0
Productivity software	1	0.2	0.7	0.7	1.3
Experience with POF equipment	2	2.0	1.7	2.0	2.0
Parking-specific systems, e.g., phone reservation, parking guidance systems, etc.	1	0.5	0.7	0.3	1.0
Flexible pricing strategies	1	0.5	0.7	0.7	0.5
<b>Operation management team</b>					
Years of experience in parking operations	3	2.2	2.0	2.3	2.7
Experience with PARCS	2	1.5	1.3	2.0	2.0
Specific ways that each manager will add value	4	2.2	2.7	2.3	2.7
<b>References</b>					
All references	5	2.7	3.2	3.3	3.2
Public agency references	4	0.8	3.3	3.7	3.7
Notices of default or breach of contract	0	0.0	0.0	0.0	0.0
History of litigation within past five years	0	0.0	0.0	0.0	0.0
Experience with other related services	2	1.2	1.7	1.3	2.0
<b>Overall Organization and Clarify of Proposal (10 points max)</b>	<b>10</b>	<b>6.8</b>	<b>8.8</b>	<b>5.7</b>	<b>8.8</b>
Proposal reflects clear understanding of RFP's scope of work	4	2.7	3.7	2.0	3.7
Completeness, clarity and organization of proposals	3	2.3	2.8	1.3	2.8
Creativity of ideas	3	1.8	2.3	2.3	2.3
<b>Management Approach (45 points max) - combined 30 pages max</b>	<b>45</b>	<b>30.8</b>	<b>36.3</b>	<b>24.3</b>	<b>34.3</b>
<b>Staffing and Operation Plan (10 page max)</b>					
Presents plan to effectively manage and operate parking facilities	6	3.3	4.3	2.5	4.3
Organization chart and staff accountability	2	1.7	1.7	0.7	1.5
Local/home office relationship	3	2.3	2.0	1.7	2.0
Staffing and management schedules	2	1.7	1.7	0.7	1.3
Customer service plans and procedures	3	2.0	2.3	2.0	2.3
Operation policies procedures and forms (records management and revenue control)	2	1.0	1.7	1.7	1.7
Staff training and development	1	0.8	1.0	1.0	1.0
<b>Maintenance Plan (5 pages maximum)</b>					
Overall strength of plan to maintain first-class facilities at the lowest possible cost	2	1.5	1.7	1.2	1.3
Demonstrates knowledge and ability to remove oil and grease	1	0.7	0.7	0.7	0.8
Ability to effectively manage subcontractors	2	1.3	1.3	1.5	1.7
Sound recommendations for additional equipment	1	0.3	0.3	0.3	0.7
<b>Security and Safely Plan (5 pages maximum)</b>					

parking facilities rfp\_written and oral scoring rubric - Written Proposal

ITEM		Points	DP	IPP	LAZ	SP
	Over all plan	3	1.8	2.3	1.3	1.7
	Contractor's ability to increase security and safety at the lowest possible cost	2	1.3	1.7	1.3	1.3
	Understands needs of customers and facilities; sound recommendations	2	1.7	1.7	0.8	1.5
	Ability to respond to new and unexpected situations	1	1.0	1.0	0.7	0.7
<b>Capital/ Investment Plan (5 pages maximum)</b>						
	Plan describing how contractor would identify, research, price and propose projects to enhance the value of parking facilities	3	1.8	2.3	1.0	2.3
	Reflects understanding of industry standards	2	1.3	2.0	1.7	2.0
	Evidence of ability to propose capital improvement projects that would meet the City's objectives	2	1.3	1.7	1.2	1.7
<b>Operations Transition/Start up Plan (5 pages maximum)</b>						
	Plan details steps to be taken for a smooth transition and effective start up to operations	2	1.5	2.0	1.0	1.5
	Plan is sufficiently detailed so as to be workable	2	1.3	2.0	1.0	2.0
	Plan is realistic and recognizes constraints (e.g., time and other limited resources)	1	1.0	1.0	0.5	1.0
<b>Budget (40 points max) - 6 pages max</b>		<b>40</b>	<b>21.0</b>	<b>27.0</b>	<b>12.8</b>	<b>28.7</b>
<b>Management and Incentive Fees</b>						
	Management Fee	5	4.0	4.3	2.3	4.3
	Net Income and Customer Service Incentive Fees	5	3.7	4.0	2.0	4.0
<b>Reimbursable Costs (5 pages maximum)</b>						
	Plan to reduce expenses without negative impacts	12	5.0	6.0	3.7	6.7
	First example of cost cutting program	4	2.0	3.3	1.0	3.7
	Second example of cost cutting program	4	2.0	3.3	1.2	3.3
	First example of capital improvement project	5	3.0	3.7	1.7	4.3
	Lower costs clearly justified	5	1.3	2.3	1.0	2.3
<b>Marketing Plan (20points max) - 10 pages max</b>		<b>20</b>	<b>9.2</b>	<b>10.3</b>	<b>8.3</b>	<b>11.3</b>
	General/ marketing plan	10	3.8	4.3	3.8	4.3
<b>Specifics</b>						
	Reflects understanding of local market segments	5	2.8	2.5	2.2	3.2
	Includes examples of successful marketing efforts	3	1.2	2.5	1.0	2.5
	Reflects innovative thinking (e.g., courtesies, amenities, etc.)	2	1.3	1.0	1.3	1.3
<b>Formating Requirements (no points)</b>						
	8 copies of technical proposal	R/N	R	R	R	R
	Bound in 3-ring binders	R/N	R	R	R	R
	Pages sequentially numbered	R/N	R	R	R	R
	Table of Contents included and accurate	R/N	R	R	R	R
	Acceptable font and font-size	R/N	R	R	R	R
	Single-spaced paragraphs	R/N	R	R	R	R
	Printed on double-sided pages	R/N	R	R	R	R
<b>Pre-Award Forms (no points)</b>						
	2 sealed envelopes	R/N	R	R	R	R
	Labeled "Contract Compliance Forms, Att: Contract Compliance"	R/N	R	R	R	R
<b>Pdf copy of proposal submitted on compact disk (no points)</b>		R/N	R	R	R	R
<b>Proposal risks being rejected If (no points)</b>						
	Required documents are missing or incomplete	R/N	R	R	R	R
	Required forms are missing or incomplete	R/N	R	R	R	R

parking facilities rfp\_written and oral scoring rubric - Written Proposal

<u>ITEM</u>	<u>Points</u>	<u>DP</u>	<u>IPP</u>	<u>LAZ</u>	<u>SP</u>
Contractor does not meet minimum requirements	R/N	R	R	R	R
Contractor fails to respond to requests for additional information	R/N	R	R	R	R
Contractor is deligent in payment of any City fees or taxes	R/N	R	R	R	R
<b>\$10,000 proposal security Included (no points)</b>	R/N	R	R	R	R
<b>Proof of financial stability (no points)</b>					
Financial Statements or Tax Returns	R/N	R	R	R	R
Letter from Insurance Agent	R/N	R	R	R	R
<b>Attestation and Certifications (no points)</b>					
Prime Contractor completed and signed (at pre-proposal meeting)	R/N	R	R	R	R
JV partners also completed and signed	R/N	R	R	R	R
Subcontractors completed and signed	R/N	R	R	R	R
<b>Disclosure of business interests (no points)</b>	R/N	R	R	R	R
<b>Proposal submitted in person before deadline (no points)</b>	R/N	R	R	R	R
<b>Total Score for Written Proposal</b>	<b>150</b>	<b>87.8</b>	<b>107.7</b>	<b>78.0</b>	<b>111.9</b>

parking facilities rfp\_written and oral scoring rubric - Oral Proposal

<u>ITEM</u>	<u>Maximum Points</u>	<u>%</u>	<u>IPP</u>	<u>DP</u>	<u>SP</u>
<b>Oral Interview/Presentation (50 points)</b>	<b>50</b>	<b>100%</b>	<b>34.3</b>	<b>35.7</b>	<b>37.8</b>
<b>Planned Presentation</b>					
Presentation is well organized/Informative	5	10%	3.2	3.7	4.3
Presenters are well prepared and knowledgeable	5	10%	3.7	3.5	4.2
On-site Manager/Team contributes to presentation.	5	10%	3.0	3.7	3.5
<b>Responsive to General Questions/Prompts</b>					
Customer Service	6	12%	4.0	4.2	4.5
Financial Performance	6	12%	4.7	4.7	5.0
Owner Relations	6	12%	3.8	4.0	4.0
Capital Improvements	6	12%	3.8	4.0	3.8
Garage Marketing	6	12%	4.7	4.7	4.7
<b>Responsive to Follow up Questions/Requests for Clarification</b>	<b>5</b>	<b>10%</b>	<b>3.5</b>	<b>3.3</b>	<b>3.8</b>