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OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT

2019 OCT 10 PM 3:53

TO: Sabrina B. Landreth
City Administrator

FROM: Ryan Russo
Director, DOT

SUBJECT: Montclair Parking Facilities Operation
and Management Agreement

DATE: October 1, 2019

City Administrator Approval

Date:

10/10/19

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution: 1) Waiving The Competitive Proposals/Qualifications (RFP/Q) Solicitation Requirement And 2) Authorizing The City Administrator To Execute An Agreement With The Montclair Village Association For The Operation And Management Of The Montclair Garage, Located At 6235 La Salle Avenue, And The Scout Lot, Located On 2250 Mountain Boulevard For An Initial Period Of Three Years At Annual Compensation Amount Of \$252,000 (Including \$237,000 In Reimbursable Operating Expenses And \$14,800 In Management Fees And Incentives) For A Total Contract Amount Of \$756,000, With An Option To Extend For An Additional Two-Years At An Annual Compensation Amount Of Up To \$252,000 For A Total Not To Exceed Contract Amount Of \$1,260,000.

EXECUTIVE SUMMARY

The recommended City Council actions would waive the City's advertising and competitive request process and authorize the City Administrator to execute a new contract with the Montclair Village Association ("MVA") to operate and manage two City-owned off-street parking facilities in the Montclair commercial district, ensuring that these facilities continue to support the economic vitality of the area and the needs of visitors, commuters and residents.

BACKGROUND/LEGISLATIVE HISTORY

MVA is a merchant-based Business Improvement District made up of approximately 230 retail and service businesses located in Oakland's Montclair District. MVA's predecessor organizations, the Montclair Garage Commission and the Montclair Business Association, were instrumental in getting the Montclair garage built in 1976 and expanded in 1988.

In 2012, City Council passed Resolution No. 84144 C.M.S. finding that MVA had satisfactorily managed the Montclair garage (305 parking stalls) and Scout lot (28 parking spaces) since 1990. This legislation directed staff to negotiate a new contract with MVA to continue operating and managing these two facilities and to return to Council for final review and approval.

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In 2013, City Council passed Resolution No. 84742 C.M.S. finding that it was still in the best interests of the City to waive the formal advertising and competitive selection requirement of the purchasing ordinance, and to enter into a new contract with MVA for parking management.

In 2014, City Council passed Resolution No. 85105 C.M.S., authorizing a three-year agreement between the City and MVA. The City exercised a two-year extension on the agreement, which expired in the summer of 2019.

ANALYSIS AND POLICY ALTERNATIVES

The operating budget of the proposed professional services agreement assumes that the hours of operation at the Montclair Garage will remain unchanged. Five years of combined parking operations, including the 305 spaces at the Montclair Garage located at 6235 La Salle Ave and the 28 spaces in the Scout Lot located at 2250 Mountain Blvd, are summarized in **Table 1** below.

Table 1. Montclair Off-Street Parking, 5 Year Summary of Operations

	FY14-15	FY15-16	FY16-17	FY17-18	FY18-19	Combined 5-yr
Gross Receipts	\$517,663	\$509,891	\$504,003	\$508,012	\$512,151	\$2,551,720
Parking Tax	\$80,807	\$79,594	\$78,675	\$79,301	\$79,947	\$398,323
Net Revenue	\$436,856	\$430,297	\$425,328	\$428,711	\$432,204	\$2,153,397
Operating Expenses & Fees	\$203,743	\$198,558	\$203,263	\$204,486	\$230,640	\$1,040,690
Net Gain/Loss	\$233,113	\$231,739	\$222,065	\$224,225	\$201,564	\$1,112,707

While the annual net gain from Montclair parking facility operations is over \$200,000, it is important to note that the Off-Street Parking Program has no cash reserves for the deferred maintenance of major systems and the eventual replacement of the parking garage, which is now more than thirty years old. In 2019, the estimated replacement cost for a parking garage with 305 spaces is \$30,500,000 (assuming \$100,000 per space). To meet this obligation, the City should commit between \$250,000 and \$750,000 annually for the Montclair Garage to ensure its uninterrupted service to the local commercial district. Staff is preparing a separate report and recommendations to address the issue of cash reserves for the City's complete portfolio of off-street parking facilities.

Fees for City-owned parking facilities are established by the City Council as part of the City's 2019-2020 Master Fee Schedule (Ordinance No. 13533 C.M.S.). The current fees for off-street parking in Montclair are presented in **Table 2** on the next page.

As in the past, the professional services agreement will include detailed maintenance standards and schedules covering cleaning, painting, and landscaping as well as general repair and

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maintenance that MVA will be responsible for and which are treated as reimbursable expenses (see **Attachment A**). Under the previous contract and consistent with City Council direction, MVA successfully maintained and in some cases improved facility conditions by identifying and eliminating trip hazards, upgrading lighting systems, maintaining safety equipment, and installing and operating surveillance cameras and electric vehicle charging stations.

In addition to reimbursable expenses, the proposed agreement follows industry best practices by establishing, on the one hand, a relatively low management fee based on the total number of parking spaces under contract; and, on the other, an incentive fee that the contractor earns only customer satisfaction survey are completed and targets are met.

Table 2. Fee Schedule for Montclair Off-Street Parking Facilities

Montclair Parking Garage		
a. Basic Fees		
1	Hourly Parking (Automobiles) MAX	\$3.00 Space / Hour
2	Daily Maximum (Automobiles) MAX	\$12.00 Space / Day
3	Overnight Parking (Close to Open) MAX	\$4.00 Space / Night
4	Monthly Parking (Unreserved) MAX	\$120.00 Space / Month
5	Motorcycles Daily MAX	\$4.00 Space
6	Bicycles	Free
7	Early Bird in by 9:30 am MAX	\$8.00 Space / Day
8	Evening after 4:00 pm till Closing Time MAX	\$4.00 Space / Day
b.	Validations Tickets (Max. 2 hrs per ticket)	\$100.00 Book of 100
c. Special Fees		
1	Lost Ticket MAX	\$12.00 Ticket
2	Monthly Access Card Set up and Purchase MAX	\$25.00 Card
3	Replacement Card MAX	\$20.00 Card
4	Penalty for Monthly Parking Paid After the 7th of the Month MAX	\$20.00 Card
5	Special Event Parking MAX	\$20.00 Space
Scout Road & Mountain Blvd. Parking Lot		
a.	Monthly Parking (Unreserved) MAX	\$80.00 Space / Month
b.	Special Event MAX	\$10.00 Space
c.	Replacement for Monthly Parking Tag	\$80.00 Tag

Under the new agreement, MVA will earn a management fee of \$2.80 per parking garage stall and \$1.65 per parking lot space per month. The combined management fee for the two facilities will be \$900.00 per month or \$10,800 per year.

Beginning six months after the start of the contract, MVA will also be eligible semi-annually for a customer satisfaction incentive fee based on City approved surveys of daily and monthly parkers. This fee is set at \$2,000 per facility semi-annually. This legislation authorizes staff to compensate MVA up to \$4,000 per year for this incentive fee.

By combining adequate resources with measured accountability, the City's new agreement with MVA should continue to enhance the value of these facilities to the Montclair community and further efforts to create a high-performing off-street parking program.

The current professional services agreement between the City and MVA expired on June 30, 2019.

Council may alternatively direct staff to conduct a competitive process and potentially put in place an operator-manager other than MVA. This alternative would likely require six to twelve months of staff time and authorization from City Council to execute a month-to-month agreement with MVA to keep the parking facilities operating in the interim. This alternative would be costly, and staff sees no clear benefit to the City in general or the Montclair commercial district in particular for doing so.

FISCAL IMPACT

Compared to the previous agreement, reimbursable expenses and fees would increase a total of \$42,800.00 or approximately 20 percent annually. Of this amount, \$41,480.00 will cover increases in personnel and operating costs, including a larger Pacific Gas & Electric bill in support of the recently commissioned EV chargers. The management fee and incentives fees are slated to increase by \$1,320.00 or approximately 10 percent annually. While expenses have increased, revenues have remained relatively constant as demand for off-street parking in the Montclair commercial district has remained relatively unchanged over the past five years. At peak periods of the day, monthly, transient and merchant validated parkers result in occupancy rates of approximately eighty to eighty-five percent, which is a parking management goal according to the City's Parking Principles (Resolution 84664 C.M.S.). As a result, parking rates and revenues have remained stable over the past five years. The current Master Fee Schedule authorizes higher rates, which staff will implement in the event there are measurable changes in parking facility utilization rates. As such, annual revenues from parking operations are projected to be around \$520,000.00. MVA is supporting staff's efforts to relocate the parking access and revenue control systems from the Clay St Garage to the La Salle Garage, which will provide new cashiering and facility control at minimum expense.

Funds for this agreement are available in Multipurpose Reserve Fund (1750), Parking Citation Assistance Center (08931), Miscellaneous Contract Services Account (54919), Non-Project (1000007), Parking Management Program (IP60).

PUBLIC OUTREACH / INTEREST

No special outreach was conducted in the preparation of this report and recommendation. However, under the terms of the previous agreement, MVA was responsible for completing semi-annual customer satisfaction surveys, which provided MVA and City staff with useful information about the parking facilities and their ongoing operation and management. The results of those surveys support staff's recommendation to renew the City's agreement with MVA.

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COORDINATION

This report and legislation were developed with the assistance of the Revenue Division in the Finance and Management Bureau and have been reviewed by the Office of the City Attorney and the Controller's Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: If this legislation is not approved, then normal operations of these facilities, including parking services, cashiering, maintenance and overall management of the garage and lot, will end. As a result, the City will lose revenue and the commercial district deprived of important resources until such time as operations are returned to normal.

Environmental: Well managed off-street parking facilities can be an important part of a comprehensive parking system that, actively managed, can reduce greenhouse gas emissions by increasing availability of parking and thereby reducing congestion and searching for parking.

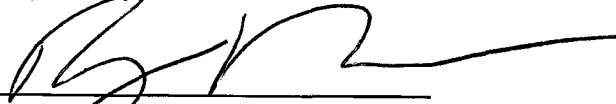
Social Equity: Effective operation and management of the City's off-street parking facilities provides public parking at competitive rates for visitors, residents, employees and businesses throughout the City and especially in business districts such as Montclair Village. Approval of this new contract will maintain the use value of the Montclair parking facilities for all stakeholders.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopts A Resolution: 1) Waiving The Competitive Proposals/Qualifications (RFP/Q) Solicitation Requirement And 2) Authorizing The City Administrator To Execute An Agreement With The Montclair Village Association For The Operation And Management Of The Montclair Garage, Located At 6235 La Salle Avenue, And The Scout Lot, Located On 2250 Mountain Boulevard For An Initial Period Of Three Years At Annual Compensation Amount Of \$252,000 (Including \$237,000 In Reimbursable Operating Expenses And \$14,800 In Management Fees And Incentives) For A Total Contract Amount Of \$756,000, With An Option To Extend For An Additional Two-Years At An Annual Compensation Amount Of Up To \$252,000 For A Total Not To Exceed Contract Amount Of \$1,260,000.

For questions regarding this report, please contact Michael Ford, Parking and Mobility Division Manager, at 510-238-7670.

Respectfully submitted,



RYAN RUSSO
Director, Department of Transportation

Reviewed by:
Wladimir Wlassowsky, P.E.
Assistant Director

Prepared by:
Michael Ford, Ph.D.
Manager, Parking and Mobility Division

Attachments (1):

A: Draft Professional Services Agreement for the Operation and Management of Parking Facilities

ATTACHMENT A

EXHIBIT A: SCOPE OF MANAGEMENT SERVICES

EXHIBIT B: MAINTENANCE STANDARDS

EXHIBIT C: MAINTENANCE SCHEDULE

EXHIBIT D: PARKING FACILITY OPERATION AND MANAGEMENT REGULATIONS

EXHIBIT A. SCOPE OF MANAGEMENT SERVICES (24 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 list below:

Facility	Address	Spaces
Montclair Garage	6235 La Salle	305
Scout Lot	2250 Mountain BLVD	28

2. COMPENSATION

2.1. Management Fee and Reimbursement of Operating Expenses

2.1.1. Contractor shall be paid a monthly Management Fee not to exceed \$2.45 per parking garage stall and \$1.45 per parking lot space. Subject to Council approval, beginning the first month of contract year three (3), the monthly management fee will be increased by the CPI index. 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 and accepted by the Contractor.~~

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 as 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, but excluding Parking Taxes (which shall be deposited into the Revenue Account pursuant to Exhibit D, Section 6.5) 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. Payment of Parking Taxes shall be the City's sole responsibility, and the City agrees to defend, indemnify, and hold harmless Contractor, with respect to any and all loss, costs (including attorney's fees), penalties, and all other liability whatsoever arising out of any breach of the City's Parking Tax payment obligations set forth herein.

4.1.2.

4.1.3. 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:

- 4.1.3.1. 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;
- 4.1.3.2. 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.
- 4.1.3.3. 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.
- 4.1.3.4. 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 four (4) 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. City's designee acknowledges that this provision does not

apply to normal leakage and emissions of oil and other lubricants from motor vehicles, while Contractor is expected to remain diligent in its efforts to mitigate such occurrences.

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. ~~Without limiting the foregoing, if Contractor or any of Contractor's Agents or Invitees causes or permits the Release 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.* For required insurance, see Schedule Q.

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 to the extent such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the City. 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 which is covered by Contractor's indemnification of the City, and upon written notice from the City, Contractor shall, at its sole expense, answer and otherwise defend such action or proceeding using counsel reasonably 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 at its own cost.

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.

11.3. *Contractor's Right of Termination.*

11.3.1. Monetary breach. 60 days for monetary breach during which the City will have the right start curing the breach which will toll the time; and

11.3.2. Non-monetary breach. 90 days for non-monetary breach with an additional transition period of 120 days during which time the contractor will be required to provide services at contract rates so that the City has sufficient time to put another Contractor in place.

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
LIGHTS						
Inspect lights	X					
Replace burnt-out bulbs	X					
Inspect broken fixtures	X					
Replace discolored covers	X					
CLEANING						
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	
PAINTING						
Paint over graffiti	X					
Paint over foreign marks		X				
Touch-up				X		
Inspect striping				X		
ELEVATORS (IF APPLICABLE)						
Inspect elevator operations	X					
Professional Periodic Maintenance					X	
Professional inspection						X
LANDSCAPING						
Inspect Irrigation System				X		
Remove Weeds		X				
Prune trees and plants					X	
SIGNS						
Inspect signs	X					

	Daily	Weekly	Monthly	Quarterly	Semi-Annually	Annually
Repair/replace damaged signs		X				
MECHANICAL						
Doors open and lock properly	X					
Inspect parking equipment	X					
Inspect HVAC operations				X		
SAFETY						
Inspect emergency lights	X					
Inspect exit lights	X					
Inspect sidewalks	X					
Inspect fire alarm/equipment	X					
Inspect/service closed circuit camera system				X		
STRUCTURAL						
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 1st of a year and ending June 30th 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 in writing 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 15th 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 Five Thousand Dollars (\$5,000.00) 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 Five Thousand Dollars (\$5,000.00), 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 four (4) 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.

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OFFICE OF THE CITY CLERK
OAKLAND

2019 OCT 11 AM 9:56

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

**RESOLUTION: 1) WAIVING THE COMPETITIVE PROPOSALS/
QUALIFICATIONS (RFP/Q) SOLICITATION REQUIREMENT AND**

2) AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN AGREEMENT WITH THE MONTCLAIR VILLAGE ASSOCIATION FOR THE OPERATION AND MANAGEMENT OF THE MONTCLAIR GARAGE, LOCATED AT 6235 LA SALLE AVENUE, AND THE SCOUT LOT, LOCATED ON 2250 MOUNTAIN BOULEVARD FOR AN INITIAL PERIOD OF THREE YEARS AT ANNUAL COMPENSATION AMOUNT OF \$252,000 (INCLUDING \$237,000 IN REIMBURSABLE OPERATING EXPENSES AND \$14,800 IN MANAGEMENT FEES AND INCENTIVES) FOR A TOTAL CONTRACT AMOUNT OF \$756,000, WITH AN OPTION TO EXTEND FOR AN ADDITIONAL TWO-YEARS AT AN ANNUAL COMPENSATION AMOUNT OF UP TO \$252,000 FOR A TOTAL NOT TO EXCEED CONTRACT AMOUNT OF \$1,260,000

WHEREAS, the Montclair Village Association ("MVA") is a merchant-based Business Improvement District made up of approximately 230 retail and service businesses located in Oakland's Montclair District City; and

WHEREAS, the MVA's predecessor organizations, the Montclair Garage Commission and the Montclair Business Association, were instrumental in getting the garage built in 1976, and expanded in 1988; and

WHEREAS, the MVA has satisfactorily managed the Montclair Garage and Scout Lot, both in the Montclair neighborhood and City-owned parking facilities, since 1990; and

WHEREAS, the City desires to maintain parking operation and facility management services for the parking facilities currently managed by the Montclair Village Association; and

WHEREAS, the City finds that the service is professional in nature; and

WHEREAS, the City finds that the agreement shall not result in the loss of salary or employment by any person having permanent status in the competitive service; and

WHEREAS, Oakland Municipal Code (OMC) Section 2.04.040.B.4 requires formal advertising and solicitation of proposals/qualifications for professional service contracts involving expenditures of more than \$25,000.00; and

WHEREAS, OMC Section 2.04.051.B allows for the waiver by the Council of these requirements upon a finding that it is in the best interests of the City to do so; and

WHEREAS, the previous agreement between the City and MVA expired on June 30, 2019 and, at the request of staff, MVA has continued to operate the parking facilities; and

WHEREAS, funds for the agreement are available in the adopted FY 2019-2021 budget in the Multipurpose Reserve Fund (1750); Parking Citation Assistance Center (08931); now, therefore, be it

RESOLVED, That the Council hereby finds and determines that it is in the best interests of the City to waive formal advertising and competitive selection requirement of the OMC to extend the current parking management contract with the Montclair Village Association, because it would be most efficient and cost effective to maintain continuity of the current and ongoing parking facility management services; and be it

FURTHER RESOLVED, That the Council hereby finds that, given its historic role in partnering with the City and businesses in the Montclair District in developing necessary parking for customers, visitors and businesses, it is in the best interests of the City to waive the formal advertising and competitive selection requirement of the OMC; and be it

FURTHER RESOLVED, that the City Administrator is hereby authorized to negotiate and execute a professional services agreement with Montclair Village Association for parking management for an initial period of three years, at an annual compensation amount of \$252,000 (including \$237,000 in reimbursable operating expenses and \$14,800 in management fees and incentives) for a total contract amount of \$756,000 with an option to extend for an additional two years at an annual compensation amount of up to \$252,000; and be it

FURTHER RESOLVED, that Montclair Village Association be compensated for said parking management services, using funding available in Multipurpose Reserve Fund (1750); Parking Meter Services (08931); Miscellaneous Contract Services Account (54919), Administrative Project (1000007), Parking Management Program (IP60); and be it

FURTHER RESOLVED, that the agreement authorized hereunder is subject to City Attorney approval for form and legality and shall be placed on file in the Office of the City Clerk without returning to Council.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California