

**PARKING ENFORCEMENT AND CITATION MANAGEMENT SERVICES
AGREEMENT
Between METROPOLITAN TRANSPORTATION COMMISSION
And CITY OF OAKLAND**

This PARKING ENFORCEMENT AND CITATION MANAGEMENT SERVICES AGREEMENT (“Agreement”) is made and entered into as of the **XX day of MONTH, 202X**, by and between the Metropolitan Transportation Commission (herein called “MTC), a regional transportation planning agency established pursuant to California Government Code § 66500 and City of Oakland (“CONTRACTOR”), a California municipal corporation. Each entity may be referred to herein as a “party” or jointly as the “parties.”

BACKGROUND

- A. CONTRACTOR performs parking enforcement, citation issuance, and citation processing within the City of Oakland.
- B. CONTRACTOR issues parking citations utilizing an automated information system that relies on electronic parking payment information to determine whether vehicles have paid a parking fee (“System”). The System will utilize information provided by a mobile payment vendor (“Payment Vendor”) under contract with MTC to determine which vehicles have not paid the required parking fee.
- C. The California Department of Transportation (“Caltrans”) owns right of way in the City of Oakland under I-880 at High Street and under I-880 at Fruitvale Avenue.
- D. MTC and Caltrans entered into a MASTER OPERATION AND MAINTENANCE AGREEMENT FOR COMMUTER PARKING/TRANSIT HUB FACILITIES WITHIN STATE HIGHWAY RIGHT OF WAY, dated November 3, 2017, that authorizes MTC to construct, operate, and maintain commuter parking facilities on Caltrans right of way within the City of Oakland under I-880 at High Street and under I-880 at Fruitvale Avenue (collectively the “Lots”).
- E. MTC desires to hire CONTRACTOR to provide parking enforcement, citation issuance, citation processing, and administrative review services for improved parking control and cost efficiency. CONTRACTOR will receive fines and penalties collected, will handle motorist inquiries, will adjudicate all citation protests and appeals, and will manage any complaints about the issuance or processing of citations with respect to the Lots, all according to applicable law.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth below, MTC and CONTRACTOR agree as follows:

1. SCOPE OF SERVICES

1.1. PARKING ENFORCEMENT

CONTRACTOR will provide parking patrol services for MTC with respect to the Lots by expanding its regular patrol coverage area to the Lots to enforce all applicable parking laws and regulations by issuing parking citations. CONTRACTOR will issue, process and adjudicate citations issued.

MTC lots include:

- I-880/High Street
- I-880/Fruitvale Avenue

A. MTC shall provide to CONTRACTOR, in a format prescribed by the CONTRACTOR's citation management system vendor, information from its mobile payment vendor, identifying by License Plate number which vehicles have paid the required parking fee.

B. The parking regulations to be enforced and the manner and means of CONTRACTOR issuing citations are set out in Attachment A, MTC Resolution No. 4390, and other law as applicable.

CONTRACTOR will provide services to enforce daily Regulation #2 of Attachment A, MTC Resolution No. 4390: "No person shall park or leave standing any vehicle in the MTC commuter parking facilities at I-880/High Street, I-880/Fruitvale Avenue, I-80/Buchanan Avenue, and any future commuter parking facilities established by MTC, without having a valid parking permit or immediately thereafter paying the posted parking fee."

CONTRACTOR will enforce all other Regulations of Attachment A, MTC Resolution No. 4390 upon request from MTC.

C. CONTRACTOR shall set parking fines consistent with City of Oakland parking fines and any other applicable law. CONTRACTOR must notify MTC of fine amounts and if fines are modified.

D. When issuing citations pursuant to this Agreement, CONTRACTOR acknowledges that it will be acting as an "issuing agency" and a "processing agency" as set out in California Vehicle Code Section 40200 and following.

E. All activities performed by CONTRACTOR pursuant to this Agreement, including but not limited to, the providing of delinquency notices, the identification of vehicle registered owners, the exchange of information with the California Department of Motor Vehicles, the notification to lessees and second registered owners, the placing and removal of vehicle registration holds, and the issuing and processing of citations for out-of-state vehicles, must be done in compliance with applicable law.

1.2. CITATION PAYMENT COLLECTION

CONTRACTOR will issue and process all citations issued under this Agreement in compliance with the statutory requirements for “issuing agencies” and “processing agencies” under California Vehicle Code Section 40200 and following and any other applicable law.

CONTRACTOR will provide MTC with parking-citation notification and payment collection services using the System utilizing information provided by the Payment Vendor. CONTRACTOR services may include but will not necessarily be limited to: notifying parking violators of parking violations and the amount of the fines and penalties for late payment; accepting payment of fines by mail or electronic payment processing; and pursuing collection of unpaid citations. The extent of collection activities must be consistent with citation management for parking citations issued by the City of Oakland and any applicable law.

1.3. INFORMATION TO BE PROVIDED TO MTC

Upon request CONTRACTOR will provide the following information to MTC : the total number of citations issued at each of the Lots per month; the total amount of revenue collected at each of the Lots per month, the total number of paid, unpaid, and protested/challenged citations in each of the Lots per month, and the total number of vehicles that have been issued citations that have previously been issued citations at each of the Lots and for each such vehicle, how many total citations have been issued at each of the Lots related to the vehicle.

1.4. OTHER SERVICES

CONTRACTOR may provide MTC with such other parking related services as may be requested by MTC during the term of this Agreement. Parties will agree on additional services in a formal written amendment to this Agreement.

2. EFFECTIVE DATE AND TERM

Consultant’s services hereunder will commence on or after **MONTH DATE, 20XX**, and will terminate no later than **MONTH DATE, 20XX**, unless extended by a duly executed amendment or earlier terminated, as hereinafter provided.

3. PAYMENT

CONTRACTOR will retain all revenue from the processing and collection of citations issued pursuant to this Agreement. These revenues shall constitute full compensation for the services provided by CONTRACTOR under this Agreement.

4. PRIVACY

CONTRACTOR shall comply with all applicable privacy laws and privacy policies in connection with its activities under this Agreement with respect to all personally-identifiable

information it receives from Payment Vendor and any other source, including but not limited to California Civil Code Section 1798 *et seq.*

5. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement must be in writing and must be either personally delivered or sent by mail, addressed as follows:

TO MTC:

Metropolitan Transportation Commission
Attn: Commuter Parking Initiative Program
Manager
Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA 94105

TO CONTRACTOR:

City of Oakland
Attn: Parking Services Manager
Department of Transportation
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which will be effective upon receipt.

6. COMPLIANCE WITH LAWS

Both parties must observe and comply with all applicable Federal, State, and local laws, regulations and ordinances.

7. INDEMNIFICATION

CONTRACTOR shall defend, indemnify and hold harmless MTC and its officers, commissioners, directors, agents, employees and representatives from and against all demands, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement caused in whole or in part by the negligent or intentional acts, including a breach of this Agreement or violation of law, of CONTRACTOR, and its officers, commissioners, directors, agents, employees, representatives or contractors.

MTC shall defend, indemnify, and hold harmless CONTRACTOR and its officers, commissioners, directors, agents, and employees, and volunteers from and against all demands, claims, actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement caused in whole or in part by the negligent or intentional acts, including a breach of this Agreement or violation of law, of MTC's officers, commissioners, directors, agents, employees, representatives or contractors.

It is the intention of MTC and CONTRACTOR that the provisions of this paragraph be interpreted to impose on each party responsibility to the other for the acts of their respective

officers, commissioners, directors, agents, employees, representatives, and CONTRACTORS. It is also the intention of MTC and CONTRACTOR that where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party must bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, representatives, and CONTRACTORS.

8. INSURANCE

CONTRACTOR, at its sole cost and expense, must carry insurance or self-insure its activities in connection with this Agreement, and obtain, keep in force and maintain insurance or equivalent program self-insurance for workers compensation, general liability, business automobile liability and excess or umbrella insurance as stated below. Each party agrees to provide the other thirty (30) days' advance written notice to MTC of any cancellation, termination or lapse of any of the insurance or self-insurance coverages.

A. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONTRACTOR's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC.

B. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of CONTRACTOR and CONTRACTOR's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 per occurrence with a general aggregate liability of not less than \$2,000,000. Such policy shall contain a Waiver of Subrogation or "Waiver of Transfer of Rights of Recovery Against Others to Us" provision included in the policy language or by endorsement in favor of MTC.

MTC and its commissioners, directors, officers, representatives, and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONTRACTOR's operations.

C. Business Automobile Insurance for all automobiles owned (if any), used or maintained by CONTRACTOR and CONTRACTOR's officers, and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

D. Excess or Umbrella Insurance in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

E. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage with limits of not less than \$1,000,000 per claim. Such cyber risk coverages shall include liability arising from the loss, theft or failure to protect, or unauthorized acquisition of personally identifiable information or confidential information.

9. INDEPENDENT CONTRACTOR

A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent CONTRACTOR and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR-assigned personnel will be entitled to any benefits payable to employees of MTC. As an independent CONTRACTOR, CONTRACTOR hereby agrees to indemnify and hold MTC harmless from any and all claims that may be made against MTC based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, than an employer-employee relationship or a substitute therefore exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of MTC as to the designation of tasks to be performed and the results to be accomplished by the services agreed to be rendered and performed under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. If CONTRACTOR obtains permission to, and does, use MTC facilities, space, equipment or support services in the performance of this Agreement, this use will be at the CONTRACTOR's sole discretion based on CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, MTC does not require the CONTRACTOR use MTC facilities, equipment or support services or work in MTC's locations in the performance of this Agreement.

C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons will be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other items of employment or requirements of law, will be determined by CONTRACTOR.

D. Nothing in this Agreement may be construed as to create an exclusive relationship between MTC and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that there is no conflict with the performance of services hereunder.

10. TERMINATION

Either party may terminate this Agreement without cause upon providing at least 90 days advance written notice to the other party that specifies the effective date of termination. Notice must be deemed served as of the date of notice.

11. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement is valid unless made in writing and signed by authorized representatives of both parties. Waiver by either party of any default, breach or condition precedent must not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement is binding upon CONTRACTOR or MTC unless agreed in writing by MTC and CONTRACTOR.

12. SEVERABILITY

If any condition or covenant herein is held to be invalid or void by any court of competent jurisdiction, the same will be deemed severable from the remainder of the Agreement and will in no way affect any other covenant or condition herein contained as long as the invalid provision does not render the Agreement meaningless with regard to a material term, in which event the entire Agreement will be void. If such condition, covenant, or other provision is deemed invalid due to its scope of breadth, such provision will be deemed valid to the extent of the scope of breadth permitted by law.

13. GOVERNING LAW; VENUE

This Agreement must be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts will lie exclusively in the County of San Francisco, Superior Court. In the event of litigation in the United States District Court, venue will lie exclusively in the Northern District of California, in San Francisco.

14. MISCELLANEOUS

This Agreement may be executed in counterparts, and when each party hereto has signed and delivered at least one such counterpart, each counterpart will be deemed an original and, when taken together with the other signed counterparts, will constitute one agreement, which will be binding upon and effective as to all parties hereto. Articles titles and paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

15. ENTIRE AGREEMENT

This Agreement, including any exhibits attached hereto, is the entire, complete, final and exclusive expression of the parties' intent, with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONTRACTOR and MTC prior to the execution of this Agreement. In the event of any conflict between the terms, conditions and provisions of this Agreement and any other such agreement, document or instrument, the terms, conditions and provisions of this Agreement must prevail. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein must be valid and binding unless in writing duly executed by the parties or their authorized representatives.

16. INTERPRETATION

The interpretation and enforcement of this Agreement will be governed by the laws of the State of California. This Agreement is deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions must not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

17. EXHIBITS

All exhibits referred herein are attached hereto and are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

METROPOLITAN TRANSPORTATION
COMMISSION

CITY OF OAKLAND

Therese W. McMillan, Executive Director

Insert Appropriate Name, Title

ATTACHMENT A

MTC Resolution No. XXXX