

# Appendix D

City of Stockton, CA, Parking Operations Assessment

## Sample Parking Management Agreement

April 2014

## Sample Parking Management Agreement

Please note: This document is provided as an example of the typical scope and detail of a recommended parking management agreement. A review of legal issues and codes specifically related to the City of Stockton and the state of California will be required.

### MANAGEMENT AGREEMENT

This **Management Agreement** (“Agreement”) is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the City of Stockton, a municipal corporation, duly organized and existing under and by virtue of the Constitution and the laws of the State of California and a duly adopted Charter (the “City”), and the \_\_\_\_\_, a for-profit corporation. (Note: \_\_\_\_\_ is used as a placeholder for the contracting parking management firm.)

### WITNESSETH:

**WHEREAS**, The City owns, operates and maintains a public parking system for the City of Stockton consisting of street metered parking, surface lots and parking garages (as more specifically described in Article 2 hereof as the “Parking System”);

**WHEREAS**, The City has issued tax-exempt bonds to finance its “Off-Street Parking Facilities” in the Stockton central business district (as defined in Article 2 hereof);

**WHEREAS**, City desires to consolidate the management of the Parking System by retaining the management services of \_\_\_\_\_ for the benefit of the public welfare and to serve a legitimate public purpose of the city;

**WHEREAS**, City and \_\_\_\_\_, believe that the public interest and the interest of future downtown development are best served by entering into this Agreement, as authorized by Ordinance No. \_\_\_\_\_.

**NOW THEREFORE**, in consideration of the promises and the mutual covenants herein contained, the parties hereto agree as follows:

### Article I

#### **APPOINTMENT OF the City of Stockton Parking Authority**

1.01 **Appointment.** City hereby appoints \_\_\_\_\_ (Private Parking Management Firm), to supervise, direct and manage the operation of the Parking System for the term provided in Article 3 hereof. \_\_\_\_\_ (Private Parking Management Firm) accepts said appointment and agrees to supervise, direct and manage the operation of the Parking System during the term of this Agreement in accordance with the terms and conditions hereinafter set forth. The performance of all activities by \_\_\_\_\_ (Private Parking Management Firm), under this Agreement shall be for the benefit of City.

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1.02 Authority to Operate. The Parking System shall be managed under the supervision and direction of the City of Stockton Parking Authority, who shall be responsible for its proper and efficient operation in accordance with the terms of this Agreement.

1.03 Authority to Subcontract.

(A) The City of Stockton Parking Authority may retain one or more experienced commercial parking operators for the day-to-day operations of the Parking System and retain such services for the operations of the Parking System upon such terms and conditions as may be reasonably determined by City of Stockton Parking Authority to be appropriate in accordance with this Agreement.

(B) Any contract, agreement or other arrangement entered into after the date of this Agreement (collectively the "Arrangement") permitting an entity other than City of Stockton Parking Authority to use, operate or manage a portion of the Parking System the cost of acquisition, construction or improvement of which, or the equipment of which, was financed by bonds of the City the interest on which was intended to be excluded from gross income for federal income tax purposes (the "Bond-financed Facilities") must either be with an organization which has a ruling of the Internal Revenue Service that it is an organization described in Section 501(c)(3) of the Code and as to which income received pursuant to the Arrangement will not be "unrelated business income" for purposes of the Code, or if an entity that is not such an organization ("Private Person") must satisfy the following:

(1) If the Private Person's use of the Bond-financed Facilities occurs pursuant to an Arrangement for management services in the operation of all or a portion of the Bond-financed Facilities:

(a) At least 50 percent of the compensation provided to the Private Person under the Arrangement is based on a periodic, fixed fee that contains no incentive adjustment (e.g., based on the efficiency or output of managed property);

(b) None of the compensation is based to any extent on a share of net profits;

(c) The compensation is reasonable in relation to the services performed;

(d) The term of the Arrangement does not exceed five years (including any renewal option provided for in the Arrangement);

(e) If the term of the Arrangement exceeds three years, the City of Stockton Parking Authority may cancel the Arrangement without penalty or cause at the end of each three-year period of the term of the Arrangement;

(f) Any automatic increase in the periodic fixed fee may not exceed the percentage increase determined by an external standard (e.g., Consumer Price Index) set forth in the Arrangement for Computing increases;

(g) Any succeeding Arrangement between \_\_\_\_\_ (Private Parking Management Firm) for management services that involve the Bond-financed Facilities is subject to the restrictions of this paragraph;

(h) If the governing body of the City of Stockton Parking Authority and the Private Person numbers five or more members, no more than one member of either one of such governing bodies is an employee or member of such other governing body and no more than one member of the governing body of the City of Stockton Parking Authority

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may be the Private Person or a related person as described in Section 144(a)(3) of the Code;

(i) If the governing body of the City of Stockton Parking Authority numbers less than five, no member of either one of such governing bodies that numbers less than five is an employee or member of such other governing body and no member of the governing body of the City of Stockton Parking Authority may be such Private Person or a related person as described in Section 144(a)(3) of the Code;

(j) The chief executive officers of \_\_\_\_\_ (Private Parking Management Firm), and the chairpersons of the governing bodies of the City of Stockton Parking Authority are not members or employees of the City of Stockton Parking Authority or their governing bodies; and

(k) Members of the governing body of the City of Stockton Parking Authority do not own a controlling interest in \_\_\_\_\_ (Private Parking Management Firm) and members of the governing body of the City of Stockton Parking Authority do not hold a controlling interest in \_\_\_\_\_ (Private Parking Management Firm) .

(2) If the Arrangement permits a Private Person to use Bond-financed Facilities then all of the following conditions of this paragraph must be met:

(a) If the Arrangement provides for compensation based entirely on a periodic fixed fee that contains no incentive adjustments, the requirements of (c) through (k) of the immediately preceding paragraph (1) must be satisfied.

(b) If the Arrangement provides for compensation based in whole or in part on a percentage of gross income or other measure, the requirements of (c), (d) and (g) through (k) of the immediately preceding paragraph (1) and the following conditions must be satisfied.

(i) The term of the Arrangement does not exceed two years; and

(ii) the City of Stockton Parking Authority is able to cancel the Arrangement at any time without penalty or cause at the end of the first year.

(3) An Arrangement under which services are to be provided by a Private Person (“Service Provider”) involving the use of all or any portion of, or any function of, the Bond-financed Facilities (for example, management services for an entire facility or a specific portion of a facility, janitorial services, etc. (“Service Contract”)) must meet all of the following conditions:

(a) The compensation for services provided pursuant to the Service Contract is reasonable;

(b) None of the compensation for services provided pursuant to the Service Contract is based on net profits from operation of the Bond-financed Facilities or any portion thereof;

(c) The compensation provided in the Service Contract satisfies one of the following subparagraphs:

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(i) At least 50% of the compensation for each annual period is based on a periodic fixed fee. “A period fixed fee” means a stated dollar amount for services rendered for a specified period of time that does not increase except for automatic increases pursuant to a specified, objective external standard that is not linked to the output or efficiency of the Bond-financed Facilities (e.g., Consumer Price Index).

(ii) All of the compensation for services is based on a capitation fee or a combination of a capitation fee and a periodic fixed fee. A “capitation fee” means a fixed periodic amount for each person for whom the Service Provider assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of service actually provided to covered persons varies substantially.

(iii) All of the compensation for services is based on a per-unit fee or a combination of a per-unit fee and periodic fixed fee. A “per-unit fee” means a fee based on a unit of service provided (e.g., a stated dollar amount for each cleaning of a facility or car parked).

(iv) All of the compensation for services is based on a percentage of fees charged by the Service Provider.

(d) The terms of the Service Contract satisfy whichever of the following subparagraphs is applicable:

(i) In the case of a Service Contract providing for compensation described in sub-subparagraph (c)(i) or (ii), the term of the contract, including all renewal options, does not exceed five years and the Service Contract is cancelable by the City of Stockton Parking Authority upon reasonable notice and without penalty or cause at the end of the third year of the contract term;

(ii) In the case of a Service Contract providing for compensation described in sub-subparagraph (c)(iii), the term of the contract, including all renewal options, does not exceed three years and the Service Contract is cancelable by the City of Stockton Parking Authority upon reasonable notice and without penalty or cause at the end of the second year of the contract term;

(iii) In the case of a Service Contract providing for compensation described in sub-subparagraph (c)(iv), the term of the contract, including all renewal options, does not exceed two years and the Service Contract is cancelable by the City of Stockton Parking Authority upon reasonable notice and without penalty or cause at the end of the first year of the contract term.

For purposes of this sub-subparagraph (d), termination of a Service Contract is considered to contain termination penalties if the termination limits the \_\_\_\_\_ (Private Parking Management Firm) ’s right to compete with the Service Provider, requires the City of Stockton Parking Authority to purchase equipment, goods, or services from the Service Provider, or requires the City of

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Stockton Parking Authority to pay liquidated damages for cancellation of the Service Contract; a requirement that the City of Stockton Parking Authority reimburse the Service Provider for ordinary and necessary expenses, or restrictions on the hiring by the City of Stockton Parking Authority of key personnel of the Service Provider are not treated as contract termination penalties.

(e) The Service Provider has no role or relationship with the City of Stockton Parking Authority that, in effect, substantially limits \_\_\_\_\_ (Private Parking Management Firm)'s ability to exercise its rights under the Service Contract, including cancellation rights;

(f) The Service Provider and its directors, officers, shareholders and employees possess in the aggregate no more than 20 percent of the voting power of the governing body of the City of Stockton Parking Authority ;

(g) \_\_\_\_\_ (Private Parking Management Firm) and members of its governing body, officers and employees possess in the aggregate no more than 20 percent of the voting power of the governing body of the Service Provider;

(h) No individual who is a member of the governing body \_\_\_\_\_ (Private Parking Management Firm) and the governing body of the Service Provider is the chief executive officer of either the City of Stockton Parking Authority or the Service Provider or the chairperson of either the governing body of the City of Stockton Parking Authority or the governing body of the Service Provider;

(i) the City of Stockton Parking Authority and the Service Provider are not member of the same controlled group (within the meaning of Treasury Regulations §1.150-1(f) or related persons, as defined in Section 144(a)(3) of the Code.

1.04 **Authority to Make Expenditures.** the City of Stockton Parking Authority shall pay the costs and expenses for the management and operation of the Parking System during the term of this Agreement from the revenues of the Parking System and from the monies received from the City in accordance with the terms of this Agreement. In no event shall the City of Stockton Parking Authority be liable for: (a) any cost or expense of the Parking System incurred by the City or any other person or entity, except as otherwise specifically provided in Article 13 hereof; or (b) any cost or expense of the Parking System which was otherwise incurred or accrued prior to the Commencement Date (as hereinafter defined).

1.05 **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship between the parties of principal and agent, partnership, or joint venture. \_\_\_\_\_ (Private Parking Management Firm) shall at all times be deemed an independent contractor without the right or authority to impose tort or contractual liability upon City. Nothing contained in this Agreement shall be deemed or construed by the parties hereto, nor by any third party, as limiting or prohibiting the ability of \_\_\_\_\_ (Private Parking Management Firm) to manage and operate the parking facilities of any other governmental entity, including, without limitation, the County of \_\_\_\_\_ and the State of \_\_\_\_\_.

**Article 2**

**DESCRIPTION OF PARKING SYSTEM**

2.01 Parking System. The “Parking System” shall refer to and consist of the following facilities:

(A) The “Off-Street Parking Facilities,” which shall include the interest of City in the following:

- i) \_\_\_\_\_ Parking Facility, located at \_\_\_\_\_ (intersection of \_\_\_\_\_ and \_\_\_\_\_), as more particularly described in Exhibit A; capacity approximately \_\_\_\_\_ cars in the structure.
- ii) \_\_\_\_\_ Parking Facility, located at \_\_\_\_\_ (intersection of \_\_\_\_\_ and \_\_\_\_\_), as more particularly described in Exhibit A; capacity approximately \_\_\_\_\_ cars in the structure.
- iii) \_\_\_\_\_ Parking Facility, located at \_\_\_\_\_ (intersection of \_\_\_\_\_ and \_\_\_\_\_), as more particularly described in Exhibit A; capacity approximately \_\_\_\_\_ cars in the structure.
- iv) such personal property owned by the City and used by or on behalf of the City in the operation of, and located at, the facilities listed in items i) through iii) above, including, without limitation, that property described in Exhibit D; and
- v) such other facilities, structures, garages, lots and spaces now owned or hereafter acquired or constructed by the City, which may be made subject to the terms of this Agreement to the extent hereafter mutually agreed in writing by the parties hereto and approved by the San Antonio City Council; together with the entrance and exit ramps, plaza areas, walkways, stairways, elevators, and office and management areas.

(B) The “On-Street Metered Parking,” shall refer to and consist of all metered parking spaces located on the streets of downtown Stockton, as more particularly described in Exhibit E, all parking meters located therein and such personal property owned by the City and used by or on behalf of the City in the operation of said meters and the collection of revenues therefrom.

2.02 Excluded Space. City has certain commercial space in the Off-Street Parking Facilities which is not used for, or in connection with, vehicular parking, which space is more particularly described in Exhibit F (“Excluded Space”). The Excluded Space shall not be considered to be a part of the Off-Street Parking Facilities or the Parking System for purposes of this Agreement.

**Article 3**

**TERM OF AGREEMENT**

3.01 Term. Subject to earlier termination of this Agreement as provided in Article 12 hereof, the initial term of this Agreement shall be for a period commencing on 12:01 a.m. on \_\_\_\_\_, or such earlier date as may be mutually agreed by the parties hereto (the “Commencement Date”) and ending at 11:59 p.m. on \_\_\_\_\_. Thereafter, this Agreement shall automatically renew for successive three (3) year periods, providing, however, that either party may terminate this Agreement if written notice is provided to the other party no later than six (6) months before the expiration of the initial term or any successive renewal term.

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4.01 **Management and Operation.** \_\_\_\_\_ (Private Parking Management Firm) shall supervise, direct and manage the operation of the Off-Street Parking Facilities, which shall be used solely for the provision of public off-street vehicular parking and related activities. The City of Stockton Parking Authority shall see to the management and operation of the Off-Street Parking Facilities in an efficient and effective manner consistent with the operation of other parking facilities in downtown Stockton. Subject to the terms of this Agreement and the Existing Agreements (as defined in Article 13 hereof), the City of Stockton Parking Authority shall have exclusive authority to determine and modify vehicular parking rates, hours of operations, hours of free parking, if any, and the policies and procedures affecting customer service, staffing and personnel, advertising and promotion, maintenance, general appearance and cleanliness, procurement of inventories and all other activities necessary for the management and operation of the Off-Street Parking Facilities. The management and operation of the Off-Street Parking Facilities shall also specifically include the collection, receipt, holding and disbursement of funds and the maintenance of bank accounts (including, without limitation, reserve accounts). All revenues generated by the operation of the Off-Street Facilities shall be held in the name of the City of Stockton Parking Authority subject to the terms of this Agreement. From and after the date of the execution of this Agreement, the City of Stockton Parking Authority shall also have the right to use office space in the Off-Street Parking Facilities for the management of the Parking System without charge.

4.02 **Condition of Facilities.** Except as set forth in the report identified in Exhibit G attached hereto, the City represents and warrants to \_\_\_\_\_ (Private Parking Management Firm) that on the Commencement Date the structural, mechanical, electrical, heating, ventilation, air conditioning, plumbing and vertical transportation elements of the Off-Street Parking Facilities will be in good repair and condition and that the Off-Street Parking Facilities will otherwise be in conformity with all applicable local, state and federal laws, ordinances, rules and regulations. On April 1 of each year during the term of this Agreement, and during the first two years of the first renewal term, the City shall provide the City of Stockton Parking Authority with the sums set forth on Exhibit H, which sums \_\_\_\_\_ (Private Parking Management Firm) shall use exclusively to perform so much of the maintenance, repair and alterations of the Off-Street Parking Facilities described in the report identified in Exhibit G as may be performed with such sums.

4.03 **Routine Repairs and Maintenance.** \_\_\_\_\_ (Private Parking Management Firm) shall maintain the Off-Street Parking Facilities in good repair and condition and in conformity with all applicable local, state and federal laws, ordinances, rules and regulations, and shall make or cause to be made such routine maintenance, repairs and minor alterations as it, from time to time, deems necessary for such purposes. The cost of routine maintenance, repairs and minor alterations to the Off-Street Parking Facilities shall be included in the Annual Budget (as defined in Section 6.03 hereof) and paid for from the revenues of the Parking System.

4.04 **Non-Routine Repairs and Maintenance.** Subject to the availability of necessary funds from the Repair Reserve, \_\_\_\_\_ (Private Parking Management Firm) shall make or cause to be made such non-routine maintenance, repairs and alterations (as defined below) as may be necessary for the proper operation of the Off-Street Parking Facilities. The cost of non-routine maintenance, repairs and alterations to the Off-Street Parking Facilities shall be paid from the Repair Reserve. If the cost of such non-routine maintenance, repair or alteration exceeds the amount of the then outstanding balance of the Repair Reserve, \_\_\_\_\_ (Private Parking Management Firm) shall so advise the City and request the City's approval of such work and the City's payment of the cost of such work to the extent such cost exceeds the then outstanding balance of the Repair Reserve. If the City does not approve such work and pay into the Repair Reserve the amount so requested within sixty (60) days after the written request therefore from the City of Stockton Parking Authority, then \_\_\_\_\_ (Private Parking Management Firm) shall not be obligated to perform such work and the City of Stockton Parking Authority may terminate this Agreement upon sixty (60) days written notice to the City. For purpose of this Agreement, non-routine maintenance, repairs and alterations shall include the sealing, repainting and resurfacing of the Off-Street Parking Facilities, and major repairs, alterations, improvements,

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renewals and replacements to the structural, mechanical, electrical, heating, ventilation, air conditioning, plumbing and vertical transportation elements of the Off-Street Parking Facilities.

4.05 Repair Reserve. \_\_\_\_\_ (Private Parking Management Firm) shall establish a reserve escrow account in a bank acceptable to City to cover the costs of non-routine maintenance, repairs and alterations (the "Repair Reserve"). Prior to the Commencement Date, the City shall pay to the \_\_\_\_\_ (Private Parking Management Firm) the sum of \$200,000.00, which the City of Stockton Parking Authority shall deposit in the Repair Reserve. Thereafter the City of Stockton Parking Authority shall deposit such additional funds in the Repair Reserve pursuant to Sections 6.05 and 6.06 of this Agreement, up to an amount to be determined annually in accordance with good engineering practice by a licensed California professional engineer experienced with the operation, maintenance and design of parking facilities and retained by the City of Stockton Parking Authority for that purpose. Such determination shall be based upon an annual report undertaken by such professional, which report shall be in a form similar to the Due Diligence Report, dated \_\_\_\_\_, prepared by \_\_\_\_\_ and attached hereto as Exhibit G. All expenditures from the Repair Reserve must be spent for non-routine maintenance, repairs and alterations and shall be appropriately documented.

4.06 Ownership of Replacements. All changes, repairs, alterations, improvements, renewals or replacements made pursuant to this Article 4 shall inure to the benefit of City unless otherwise denoted by written agreement between the City of Stockton Parking Authority and the City. This Section 4.06 shall not limit or restrict the right or ability of the City of Stockton Parking Authority to lease property from any third party for the management or operation of the Off-Street Parking Facilities, wherein such party retains title to such property.

4.07 Liens. \_\_\_\_\_ (Private Parking Management Firm) will not, directly or indirectly, create or permit to be created or to remain, and will promptly remove and discharge or cause to be removed and discharged, any liens from being filed against the Off-Street Parking Facilities, or any funds of the City of Stockton Parking Authority or the City, which arise from any maintenance, changes, repairs, alterations, improvements, renewals or replacements in or to the Off-Street Parking Facilities or any party thereof, or any attested accounts, other than those liens approved by City in writing or created by or resulting from any act or status of City. The existence of any mechanic's, laborers, materialman's, supplier's or vendor's lien, or any right in respect thereof, shall not constitute a violation of this Section 4.07 if payment is not then due upon the contract or for the goods or services in respect of which any such lien has arisen or if the City of Stockton Parking Authority is contesting the same in good faith. The City of Stockton Parking Authority shall not create any mortgage or other lien or encumbrance upon the Off-Street Parking Facilities or any part thereof. This Section 4.07 shall not limit or restrict the right or ability of the City of Stockton Parking Authority to lease property from any third parties for the management or operation of the Off-Street Parking Facilities, wherein such party retains title to such property. The City or the City of Stockton Parking Authority may, at its expense and after prior written notice to the other, by appropriate proceedings diligently prosecuted, contest in good faith the validity or amount of any such lien, and during the period of contest, need not pay the items so contested, provided however, if at any time the City or the City of Stockton Parking Authority shall deliver to the other an opinion of independent counsel to the effect that by nonpayment of any such times, any part of the Off-Street Parking Facilities will be materially affected or will be subject to imminent loss or forfeiture, the City of Stockton Parking Authority shall promptly cause such lien to be discharged as aforesaid.

4.08 Access to Off-Street Parking Facilities. \_\_\_\_\_ (Private Parking Management Firm) shall have the right to enter upon the Off-Street Parking Facilities at all reasonable times for the purpose of inspecting or having others inspect same to determine the condition of the Off-Street Parking Facilities or the extent of the City of Stockton Parking Authority's compliance with its obligations hereunder. Any concern, comment or question City may have during or after such visit shall first be directed to the City of Stockton Parking Authority and thereafter, following reasonable advance notice to the \_\_\_\_\_ (Private Parking

Management Firm), the City may communicate with (but not direct) any operator which the City of Stockton Parking Authority may retain under Section 1.03 of this Agreement. Notwithstanding the provisions of this Section 4.08, the City's access shall not interfere with the management or operation of the Off-Street Parking Facilities, and the City shall not have the right to use or permit any other persons to use the Off-Street Parking Facilities during the term of this Agreement except as provided in this Agreement. Notwithstanding the foregoing, however, the City shall have the right to use, without additional charge, up to \_\_\_\_\_ parking spaces in the \_\_\_\_\_ Parking Facility for the parking of city vehicles, at such locations as may be designated by the City of Stockton Parking Authority from time to time, provided that the City shall release any or all of such spaces upon the written reasonable request of the City of Stockton Parking Authority received by the City not less than 30 days prior to the requested date if the \_\_\_\_\_ Parking Facility is fully occupied on a regular basis.

4.09 Mutual Cooperation. \_\_\_\_\_ (Private Parking Management Firm) and the City shall reasonably and mutually cooperate and coordinate with the other in the performance of their respective maintenance, repair and replacement activities with respect to Off-Street Parking Facilities (insofar as the City of Stockton Parking Authority is concerned) and with respect to the Off-Street Parking Facilities and other municipal improvements (insofar as the City is concerned), so as to minimize any disruptions to the operations of the other.

4.10 Additional Off-Street Parking Facilities. City and \_\_\_\_\_ (Private Parking Management Firm) agree to cooperate and consult with each other in the development and operation of any other public parking facilities, structures or garages which the City may wish to construct, own or operate in Stockton ("New Facilities"). City acknowledges that any New Facilities may affect the operation of the Parking System and the ability of the City of Stockton Parking Authority to perform in accordance with the terms of this Agreement.

## Article 5

### ON-STREET METERED PARKING

5.01 Ownership and Policing Powers Vested in City. Nothing in this Agreement shall be construed to limit the City's power to control its streets pursuant to law. City shall retain ownership and policing powers over On-Street Metered Parking. City shall have ultimate authority concerning vacating streets and altering the course of traffic, including the right of traffic control, and shall have the ultimate authority as to issues such as visibility and general safety relating to City streets.

5.02 Parking Violations. The City agrees to retain the by \_\_\_\_\_ (Private Parking Management Firm) to perform certain services for the On-Street Metered Parking, including but not limited to, issuing, processing and collecting of parking tickets for On-Street Metered Parking, provided that the City of Stockton Parking Authority personnel issuing such parking tickets are duly authorized to do so under California law, and the collection of parking meter revenues. \_\_\_\_\_ (Private Parking Management Firm) shall perform said services in collaboration with the City of Stockton Parking Authority, the Department of Police, the City of Stockton Prosecutor's Office and existing traffic violations personnel. All revenues generated by the operation of On-Street Metered Parking and collected by the \_\_\_\_\_ (Private Parking Management Firm) from On-Street parking meters shall be held in City's name in an escrow account in a bank acceptable to City and systematically transferred to an account held in the City of Stockton Parking Authority's name on a daily basis for use by \_\_\_\_\_ (Private Parking Management Firm) in accordance with California law and this Agreement.

5.03 Meters and Signage. All traffic and parking zones within the City streets are established by and subject to the control of the City of Stockton Parking Authority in accordance with the Stockton Municipal Code.

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After thirty (30) days following the reasonable request of \_\_\_\_\_ (Private Parking Management Firm) to the City of Stockton Parking Authority may, at its reasonable discretion, change the time limits on meters, and/or change the parking rates for the On-Street Metered Parking. Subject to the approval of the \_\_\_\_\_, the City of Stockton Parking Authority may replace and remove parking meters related to the On-Street Metered Parking. The City of Stockton Parking Authority and/or the Department of Police may temporarily cap (bag) parking meters for construction and other short-term public purposes. The City also regulates the installation and removal of all traffic signs within the City streets. \_\_\_\_\_ (Private Parking Management Firm) shall request of the City in writing fourteen (14) days in advance concerning the installation and removal of all traffic signs concerning the On-Street Metered Parking.

5.04 Repairs and Maintenance. \_\_\_\_\_ (Private Parking Management Firm) shall maintain On-Street Metered Parking in good repair and condition and in conformity with all applicable local, state and federal laws, ordinances, rules and regulations, and shall make or cause to be made all necessary repairs, improvements and replacements to On-Street Metered Parking control equipment and meters. City shall continue to be responsible for providing street maintenance services on City streets. \_\_\_\_\_ (Private Parking Management Firm) and the City shall reasonably and mutually cooperate and coordinate with the other in the performance of their respective maintenance, repair and replacement activities with respect to On-Street Metered Parking (insofar as \_\_\_\_\_ (Private Parking Management Firm) is concerned) and the streets (insofar as the City is concerned), so as to minimize any disruptions to the operations of the other.

**Article 6**

**BOOKKEEPING AND FINANCIAL ADMINISTRATION**

6.01 **Books and Records.** \_\_\_\_\_ (Private Parking Management Firm) shall keep full and adequate books of account and other records relating to or reflecting the results of operation of the Parking System, to be kept in substantial accordance with generally accepted accounting principles applied on a consistent basis, and so as to permit the City to comply with its Charter. Separate books and records shall be maintained for On-Street Metered Parking and the Off-Street Parking Facilities as well as for each individual parking facility constituting a part of the Off-Street Parking Facilities. All such books and records shall at all times be considered the property of City, however \_\_\_\_\_ (Private Parking Management Firm) shall control, administer, maintain and otherwise be solely responsible for such books and records during the term of this Agreement. Upon termination of this Agreement, \_\_\_\_\_ (Private Parking Management Firm) shall turn over all such books and records to City within one hundred twenty (120) days from the date of such termination, and all such books and records shall thereafter be reasonably available to the City of Stockton Parking Authority for inspection, audit, examination and copying for a period of ten (10) years.

6.02 **Accounts and Expenditures.** Upon the execution hereof, City shall annually pay to \_\_\_\_\_ (Private Parking Management Firm) the sum of \$ \_\_\_\_\_, which sum shall be used by the \_\_\_\_\_ (Private Parking Management Firm) solely for the cost of the management and operation of the Downtown Parking System and reimbursement of certain administrative expenses of \_\_\_\_\_ (Private Parking Management Firm) . \_\_\_\_\_ (Private Parking Management Firm) may also use revenues generated from the operation of the Parking System for its administrative expenses as provided in the Annual Budget (as defined in Section 6.03 hereof), but shall not charge any additional management fee for its own services in addition to its expenses. Revenues generated from the operation of the Parking System shall be deposited by \_\_\_\_\_ (Private Parking Management Firm) in a bank approved by City. Whenever feasible, interest-bearing accounts shall be utilized. Withdrawals and payments made by \_\_\_\_\_ (Private Parking Management Firm) from said accounts shall be made only by representatives as authorized by the City of Stockton Parking Authority , and only for the purposes permitted by this Agreement. City acknowledges and agrees that \_\_\_\_\_ (Private Parking Management Firm) may use the revenues generated from any part of the Parking System to pay the operating expenses for any part of the Parking System, without regard to the

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source of such revenue within the Parking System, it being the intent of the parties to operate the entire system as a whole unit on the City's behalf and without regard to the source of the revenue or the operation expense. The same shall also be true for all reserves to be established or generated under this Agreement. Upon termination of this Agreement, \_\_\_\_\_ (Private Parking Management Firm) shall turn over all remaining accounts and reserves to the City after deduction for outstanding operating expenses for the Parking System and \_\_\_\_\_ (Private Parking Management Firm) through the date of termination. \_\_\_\_\_ (Private Parking Management Firm) shall provide an accounting of such expenses to the City.

6.03 Annual Budget. \_\_\_\_\_ (Private Parking Management Firm) shall submit to the City of Stockton Parking Authority an annual operating plan and budget ("Annual Budget") in a format as set forth in **Exhibit I** attached hereto, or in a format as may be otherwise approved by City as follows. The First Annual Budget for the first full Fiscal Year hereunder (to be adjusted for the actual Commencement Date) is attached as **Exhibit J**, and has been found to be reasonably acceptable to both parties. The subsequent Annual Budgets for each remaining Fiscal Year, or portions thereof, included in the term of this Agreement, shall be due on June 15 of each preceding year. Such Annual Budget shall set forth in reasonable detail in conformance with those accounting requirements as set forth in Section 6.01, a detailed estimate of the income and operating and capital expense of the Parking System for the next succeeding Fiscal Year. Commencing on the date of submission, the Mayor shall have a thirty (30) day period to provide his or her comments with respect to the Annual Budget. If at the expiration of the thirty (30) day period, the Mayor fails to provide his or her comments with respect to a submitted Annual Budget, said Annual Budget shall become final. In the event the City of Stockton Parking Authority does provide its comments in a timely manner, City of Stockton Parking Authority shall work in good faith and with due diligence to achieve an Annual Budget reasonably acceptable to both parties. Consistent with the foregoing provisions, sixty (60) days prior to the commencement of the ensuing Fiscal Year, **the City of Stockton Parking Authority** shall resubmit a final revised Annual Budget to the Mayor.

6.04 Periodic Reports. \_\_\_\_\_ (Private Parking Management Firm) shall provide the City with an annual financial report showing such items of income and expense as are required to be set forth in the Annual Budget, with a comparison of line items with those in the applicable Annual Budget. \_\_\_\_\_ (Private Parking Management Firm) shall also provide the City with a monthly financial report showing such items of income and expense as are required to be set forth in the Annual Budget on both a cumulative basis for that calendar month and any prior calendar months during such Fiscal Year and on a non-cumulative, independent basis for such month alone. \_\_\_\_\_ (Private Parking Management Firm) shall also maintain daily reports setting forth such financial information in regards to the Parking System operations as results from the City of Stockton Parking Authority's standard financial accounting and reporting procedures. \_\_\_\_\_ (Private Parking Management Firm) shall be responsible for the preparation of any interim financial reports that City may reasonably request. \_\_\_\_\_ (Private Parking Management Firm) shall provide the City with the periodic reports sets forth in this Section 6.04 as promptly as reasonably possible. Such reports shall be based upon the records of \_\_\_\_\_ (Private Parking Management Firm) maintained in accordance with Section 6.01 of this Agreement.

6.05 Parking Fund. The City shall pay to \_\_\_\_\_ (Private Parking Management Firm) such balance as may be remaining in the City's parking fund at date, which \_\_\_\_\_ (Private Parking Management Firm) shall deposit in the Repair Reserve. All expenditures of such funds by \_\_\_\_\_ (Private Parking Management Firm) shall be made in accordance with Section 4.05 hereof.

6.06 Surplus. Parking System revenues in excess of Parking System operating expenses ("Net Revenues") at the end of each Fiscal Year shall be first applied to the Repair Reserve up to the amount certified in Section 4.05 of this Agreement. Net Revenues remaining after application to the Repair Reserve shall be promptly remitted to City and first used by the City for the payment of the existing debt services for obligations issued by the City for the Off-Street Parking Facilities to the extent that the Debt Service Reserve established by Article 7 of this Agreement is insufficient for such purposes.

6.07 Inspection of Books and Records. City shall have the right to inspect and audit the books and records maintained by \_\_\_\_\_ (Private Parking Management Firm) pursuant to this Article 6 at all reasonable times.

6.08 Certified Audit. \_\_\_\_\_ (Private Parking Management Firm) shall provide the City with an annual review of the annual financial statements of \_\_\_\_\_ (Private Parking Management Firm) prepared by an independent public accountant. For the second year of the initial term and each alternate year thereafter, \_\_\_\_\_ (Private Parking Management Firm) shall provide the City with an independent audit of the most recent annual financial statements of \_\_\_\_\_ (Private Parking Management Firm).

## Article 7

### **TAX-EXEMPT MUNICIPAL BONDS**

7.01 Debt Service Reserve. \_\_\_\_\_ (Private Parking Management Firm) shall establish a reserve escrow account to assist the City with the amortization of the existing debt service for Off-Street Parking Facilities (the "Debt Service Reserve"). During the term of this Agreement, \_\_\_\_\_ (Private Parking Management Firm) shall make monthly payments, as provided by Exhibit K, from the revenues of the Parking System to the Debt Service Reserve. Such payments shall be recorded as part of, and included in, the Annual Budget. Funds deposited in the Debt Service Reserve shall be delivered to City semiannually on May 15 and November 15 to be used for payment of debt service on obligations issued by the City for the Off-Street Parking Facilities. As to the holders of the outstanding obligations of the City, the City shall be responsible for the payment of the debt service on obligations issued by the City for the Off-Street Parking Facilities.

7.02 Tax-Exempt Status of Bonds. The City and ***the City of Stockton Parking Authority*** hereby covenant and represent that neither shall take any action or fail to take action that may be required of it for interest on the outstanding notes and bonds of the City to be and remain excluded from the gross income of the holders thereof for federal income tax purposes.

## Article 8

### **INSURANCE**

8.01 Liability Insurance. \_\_\_\_\_ (Private Parking Management Firm) shall procure and maintain, during the term of the Agreement, commercial general liability insurance with limits of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 annual aggregate. The City, its officials, officers and employees shall be named as additional insured using ISO form GC 20 24 "Additional Insured-Owners or Other Interests From Whom Land Has Been Leased" or such other form as may be acceptable to the City. \_\_\_\_\_ (Private Parking Management Firm) 's insurance coverage shall be primary insurance as respects the City. Any insurance or self-insurance maintained by the City shall be excess of \_\_\_\_\_ (Private Parking Management Firm)'s insurance and non-contributing. Any self-insurance retention or deductible insurance plans shall be the sole responsibility (without contribution or set-off from City) of \_\_\_\_\_ (Private Parking Management Firm). The commercial general liability policy shall contain the following definition of "insured contract":

"That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of

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another party to pay for 'bodily injury' or 'property damage' to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement."

The Certificate of Insurance must include this specific language on the certificate of insurance or otherwise to confirm this definition of any insured contract. \_\_\_\_\_ (Private Parking Management Firm) shall furnish the City with a Certificate(s) of Insurance (form ACCORD 25-S) and a copy of the additional insured endorsement acceptable to the City during the term of this Agreement and any extension thereof. A copy of the policy(s) shall be provided the City upon request. \_\_\_\_\_ (Private Parking Management Firm) expressly understands that the insurance requirements as outlined above are minimum requirements to be met under this Agreement and does not in any manner represent that the limits, coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the City.

8.02 Property Insurance. City shall keep the Off-Street Parking Facilities, including all property contained therein, insured against loss or damage from fire, explosion and similar casualties or other cause normally covered in standard broad form property insurance policies, in an amount not less than ninety percent (90%) of the replacement cost thereof. Insurance shall be carried in the name of City and any losses thereunder shall be payable to the parties hereto as their respective interest so entitles them to receive.

8.03 Workers' Compensation. \_\_\_\_\_ (Private Parking Management Firm) agrees at all times during the term of this Agreement to maintain adequate Workers Compensation Insurance consistent with the laws of the State of California and unemployment insurance in such amounts and with such deductibles as are required by law.

8.04 Waiver and Subrogation. City and \_\_\_\_\_ (Private Parking Management Firm) do hereby release and waive the right of recovery and suit against each other and shall, to the extent possible, procure endorsements to such effect on any insurance policies required under this Article 8, for loss or damage to property arising out of the perils insured against under this Article 8 covered by valid and collectible insurance carried at the time of the loss or damage to the extent such loss or damage is indemnified by such insurance, regardless if such loss or damage is caused by the fault or neglect of either party.

## Article 9

### INDEMNIFICATION

9.01 Indemnification. \_\_\_\_\_ (Private Parking Management Firm) agrees to defend and hold harmless and indemnify the City, its officials, officers and employees from and against any and all loss, damage, claims or expense whatsoever by reason of injury (including death) to or loss by any person or property arising negligent acts from \_\_\_\_\_ (Private Parking Management Firm)'s (including but not limited to its agents, contractors, vendors and employees - however known) supervision, direction, management and operation of the Parking System, whether said injury or damage is suffered by \_\_\_\_\_ (Private Parking Management Firm) , its agents, contractors, vendors or employees or any other persons whomsoever who seek to hold the City, its officials, agents and employees liable. It is understood and agreed that this indemnification obligation is enforceable to the full extent permitted by California law. In any and all claims against the City by any employee of \_\_\_\_\_ (Private Parking Management Firm), anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, hereby expressly waives the immunity proved to \_\_\_\_\_ (Private Parking Management Firm) by California law so that this indemnification obligation may be enforced by the City against \_\_\_\_\_ (Private Parking Management Firm) in those instances. The indemnification obligation shall not be limited in any way by the insurance requirements but shall be in addition to those requirements.

**Article 10**

**PROCEEDS FROM CASUALTY**

10.01 Proceeds from Casualty. Any proceeds received by the City or \_\_\_\_\_ (Private Parking Management Firm) from any insurance policies required to be maintained pursuant to this Agreement or otherwise because of casualty or damage to the Parking System shall be promptly used to restore the Parking System to a condition mutually satisfactory to City and \_\_\_\_\_ (Private Parking Management Firm). If in the good faith judgment of City the funds received from any insurance policies or otherwise shall be insufficient to restore the Parking System to a satisfactory condition, and if additional funds of \_\_\_\_\_ (Private Parking Management Firm) or City are not made available, or if additional bonds are not authorized to make proper restoration, then the City or \_\_\_\_\_ (Private Parking Management Firm) shall have the right and option to terminate this Agreement upon sixty (60) days notice.

**Article 11**

**TAXES**

11.01 **Real Estate and Property Taxes.** The Off-Street Parking Facilities are currently exempt from real property taxes on the improvements, but not from real estate taxes on the land nor from special assessments. City and \_\_\_\_\_ (Private Parking Management Firm) agree that they shall not take any action to impair said tax exempt status of the Off-Street Parking Facilities (unless it is mutually agreed that taxable bonds be considered to provide more flexibility regarding parking facility usage). City shall pay all real estate taxes on the land and all special assessments for all periods which are due and payable through \_\_\_date\_\_\_. \_\_\_\_\_ (Private Parking Management Firm) shall pay the real estate taxes on the land and the special assessments for the Off-Street Parking Facilities on a due and payable basis during the term of the Agreement, commencing with the taxes and assessments due and payable after \_\_\_date\_\_\_, from the revenues of the Parking System as part of the operating expenses of the Parking System. The City or \_\_\_\_\_ (Private Parking Management Firm) may, at its expense and after prior written notice to the other, by appropriate proceedings diligently prosecuted, contest in good faith the validity or amount of any such taxes, assessments or other similar charges, and during the period of contest, need not pay the items so contested, provided however, if at any time the City or \_\_\_\_\_ (Private Parking Management Firm) shall deliver to the other an opinion of independent counsel to the effect that by nonpayment of any such times, any part of the Off-Street Parking Facilities will be materially affected or will be subject to imminent loss or forfeiture, \_\_\_\_\_ (Private Parking Management Firm) shall promptly pay such taxes, assessments or similar charges.

**Article 12**

**DEFAULT AND REMEDY**

12.01 **Default by** \_\_\_\_\_ (Private Parking Management Firm). Any of the occurrences or acts set forth in this Section 12.01 shall constitute an event of default of \_\_\_\_\_ (Private Parking Management Firm) under this Agreement:

- (A) The failure of \_\_\_\_\_ (Private Parking Management Firm) to perform, keep or fulfill any material provision of this Agreement for thirty (30) days after City shall have delivered to \_\_\_\_\_ (Private Parking Management Firm) written notice of such failure. Provided, however, if a default referred to in this Section 12.01(A) cannot be cured

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within thirty (30) days, then upon receipt by City of a certificate from \_\_\_\_\_ (Private Parking Management Firm) stating (i) the reason that such default cannot be cured within thirty (30) days, and (ii) that the \_\_\_\_\_ (Private Parking Management Firm) is proceeding with diligence to cure such default, the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence; or

- (B) If a receiver, trustee, custodian or liquidator of \_\_\_\_\_ (Private Parking Management Firm) shall be appointed in any proceeding brought by \_\_\_\_\_ (Private Parking Management Firm) ; or if any such receiver, trustee custodian or liquidator shall be appointed in any proceeding brought against \_\_\_\_\_ (Private Parking Management Firm) or its assets and shall not be discharged within ninety (90) days after such appointment; or if \_\_\_\_\_ (Private Parking Management Firm) shall consent to or acquiesce in such appointment; or
- (C) If \_\_\_\_\_ (Private Parking Management Firm) shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due.

**12.02 Default by City.** Any of the occurrences of acts set forth in this Section 12.02 shall constitute an event of default by City under this Agreement:

- (A) The failure of City to perform, keep or fulfill any material provision of this Agreement for thirty (30) days after \_\_\_\_\_ (Private Parking Management Firm) shall have delivered to City written notice of such failure. Provided, however, if a default referred to in this Section 12.02(A) cannot be cured within thirty (30) days, then upon receipt \_\_\_\_\_ (Private Parking Management Firm) of a certificate from City stating (i) the reason that such default cannot be cured within thirty (30) days, and (ii) that City is proceeding with diligence to cure such default, the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence;
- (B) The issuance by any court of competent jurisdiction of a permanent injunction in any way preventing the use of the Parking System for the purposes set forth in this Agreement.

**12.03 Remedies.** (A) In the event of default by \_\_\_\_\_ (Private Parking Management Firm) under Section 12.01, City may terminate this Agreement and take possession of the Parking System and/or pursue any other remedy provided by law.

- (B) In the event of default by City under Section 12.02, \_\_\_\_\_ (Private Parking Management Firm) may terminate this Agreement and/or pursue any other remedy provided by law.

### Article 13

#### EXISTING AGREEMENTS

**13.01 Existing Agreements.** Attached hereto as **Exhibit L** are various City agreements with third parties (“Existing Agreements”) regarding the use and enjoyment of the Parking System on and after the Commencement date. Effective on the Commencement Date, the City shall assign all right, title and interest in

and to the Existing Agreements to \_\_\_\_\_ (Private Parking Management Firm), and \_\_\_\_\_ (Private Parking Management Firm) shall assume and perform the prospective obligations of the City thereunder; provided, however, that in no event shall \_\_\_\_\_ (Private Parking Management Firm) be responsible for any obligations of the City with respect to the Existing Agreements which relate to the period prior to the Commencement Date. The City represents and warrants to \_\_\_\_\_ (Private Parking Management Firm) on the date hereof and on the Commencement Date (a) that the Existing Agreements are true, correct and complete copies of the same; (b) that the Existing Agreements constitute the entire agreement with said parties, are in full force and effect, and have not been amended or in any way modified except as expressly set forth therein; (c) that there exists no default or event of default under the Existing Agreements or other condition, that with the giving or notice or passage of time or both would constitute a default or event of default under the Existing Agreements; and (d) that except for the Existing Agreements there are no other agreements with any persons or entities regarding the management, operation, use or enjoyment of the Parking System. After the date hereof and until the termination of this Agreement, City agrees not to enter into any agreements, with any persons or entities for the ownership, management, operation, use or enjoyment of the Parking System, which remain in effect on or after the Commencement Date. Without limiting the generality of the foregoing, City shall not after the date hereof and until the expiration of this Agreement bargain, sell, convey, assign, mortgage, pledge, gift or in any manner transfer any of its right, title, or interest in the Parking System, or permit or authorize any other person or entity to use the Parking System on or after the Commencement Date except as provided in this Agreement.

#### Article 14

##### MISCELLANEOUS PROVISIONS

14.01 Notices. Any notice by either party to the other shall be in writing and shall be hand-delivered or mailed by registered or certified mail in a postage prepaid envelope addressed:

To City: City of Stockton  
Address  
Attention: Mayor

To \_\_\_\_\_ (Private Parking Management Firm):  
Attention: Executive Director

or at such other address as City and \_\_\_\_\_ (Private Parking Management Firm), respectively, may designate in writing from time to time. Notice shall be deemed to have been duly given upon receipt.

14.02 Entire Agreement. This Agreement constitutes the sole agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof.

14.03 Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable, the remainder of this Agreement or the application of which is invalid or unenforceable shall not be affected thereby.

14.04 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.

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14.05 No Waiver. Except as otherwise specifically provided in this Agreement, the failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect.

14.06 Governing Law. This Agreement shall be construed under and governed by the laws of the State of California.

14.07 Headings. The article and section headings contained in this Agreement are for convenience only and do not define, limit or construe the contents of such articles and sections.

14.08 Amendment. No amendment or modification of the terms hereof shall be binding unless the same shall be in writing and duly executed by the parties hereto.

14.09 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

14.10 Force Majeure. In the event \_\_\_\_\_ (Private Parking Management Firm) or the City shall be delayed or otherwise prevented from the performance of any act required hereunder by reason of strikes, walkouts, other labor disputes, acts of God, inability to procure materials or labor, failure of power, restrictive governmental laws or actions, riots, insurrections, war, or other reason of like nature or any other reason not the fault of and beyond the reasonable control of \_\_\_\_\_ (Private Parking Management Firm) or the City as the case may be, then performance of such act shall be excused for the period of the delay so resulting.

14.11 Nondiscrimination. \_\_\_\_\_ (Private Parking Management Firm) shall comply with all federal and state laws with regard to nondiscrimination in employment.

14.12 Assignment. This Agreement may not be assigned by either party without written consent of the other.

14.13 Fiscal Year. The "Fiscal Year" of \_\_\_\_\_ (Private Parking Management Firm) shall begin on the first day of January in each year.

14.14 No Personal Liability. No covenant, stipulation, obligation or agreement of the City or \_\_\_\_\_ (Private Parking Management Firm) contained in this Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, trustee, agent or employee of City or \_\_\_\_\_ (Private Parking Management Firm) in other than his or her official capacity; and neither the members of \_\_\_\_\_ City Council or any trustee or officer of the City or \_\_\_\_\_ (Private Parking Management Firm) shall be subject to any personal liability or accountability by reason of the covenants, stipulations, obligations or agreements contained in this Agreement.

Signed by the Parties:

\_\_\_\_\_  
  
\_\_\_\_\_