

PARKING OPERATOR AGREEMENT

1. Project Objectives

The City of Stockton and the Stockton Parking Authority (City) recognizes the importance of the provision of quality parking services to its businesses, residents and visitors, and for the on-going and future economic development of the City. LAZ Parking Services Inc, (CONTRACTOR) has been chosen as a qualified parking management firm to provide Parking Management/CONTRACTOR Services as detailed herein to augment and enhance the City's parking system. The City's downtown features a movie theatre, as well as other visitor attractions such as a minor league ballpark, arena, and marina which offer a variety of activities, requiring a comprehensive and customer-focused approach to parking. To that end, CONTRACTOR will manage, operate, and administer the City's parking system as outlined herein in a superior manner and with a high level of financial control to improve the delivery of parking services to City residents, visitors and businesses.

2. Project Scope

Contractor shall operate, manage, and maintain the identified parking facilities solely as a first-class commercial public parking facility with energy, fidelity, diligence and in full compliance with all terms, provisions and conditions of this Agreement. (Attachment A - Downtown Parking District Boundaries, and Attachment B - Downtown Parking District Facilities) Contractor recognizes the special interest of the Parking Authority in rendering the highest possible quality of courteous service to all customers of the identified facilities. Contractor acknowledges, agrees and covenants that the Parking Authority of the City of Stockton's Executive Director (Executive Director) or delegated official has full and complete authority in determining compliance and operating standards and shall, at his/her sole discretion, enforce those standards to the fullest extent.

3. Specifications

CONTRACTOR shall provide "best practice" management services for the City's parking system, including but not limited to the following:

- 3.1 Management and maintenance of the City's off-street parking facilities, including five parking structures, and surface parking lots;
- 3.2 On-street parking pay-by-plate machine maintenance and revenue collection;
- 3.3 Monthly and residential parking permit administration – provide web-based parking permit management;
- 3.4 Customer accessibility- provide and support a website page for the City parking operation including available facilities, rates, and web-based payment options;

- 3.5 Customer service, including response to stakeholder and constituent concerns or issues;
- 3.6 Coordination of parking matters with local businesses;
- 3.7 Event parking planning and coordination;
- 3.8 Juror parking within the facilities;
- 3.9 Parking advisory services, including recommendations on rates, service enhancements and implementation of municipal parking “best practices”.

4. Major Deliverables

4.1 Administrative

Among the administrative responsibilities of the CONTRACTOR are the following items:

- A. Personnel Administration: The CONTRACTOR will provide staff to undertake the operation, maintenance, administration, customer service, and event services of the parking system as outlined herein. The CONTRACTOR will be required to supply adequate staff, as reviewed by and agreed to by the City, to successfully perform the services as listed herein. The CONTRACTOR will be responsible for the selection, bonding (where applicable) and training of all employees. The CONTRACTOR shall assume primary liability for the acts, negligence and omissions of its employees.
 - 1. The CONTRACTOR shall employ persons who are fully trained, competent, and qualified with the skills and experience necessary to provide the services during the term of this contract.
 - 2. The CONTRACTOR will have access to an adequate labor pool within thirty (30) miles of the City.
 - 3. The CONTRACTOR is required to do background checks and drug testing on all employees prior to employment and provide proof of such to the City. Parking personnel will demonstrate high ethical standards of conduct and will observe all written rules and regulations concerning their work assignments as provided by the CONTRACTOR.
 - 4. The CONTRACTOR will ensure that all parking personnel wear City-approved uniforms and be properly groomed while on duty. The uniform must display CONTRACTOR insignia that clearly identifies the wearer as being responsible for parking services.
 - 5. The CONTRACTOR shall have an on-duty, full-time Manager and Assistant Manager who shall oversee the operation and employees of the CONTRACTOR, who shall manage and control the operation, ensuring high quality service and employee performance. The Managers shall be trained in the CONTRACTOR’s corporate management training program and be certified by the CONTRACTOR as competent to perform the duties required by the position. One individual may not serve as both the Manager and Assistant Manager.

- B. Payroll: The CONTRACTOR will assume all payroll responsibilities for CONTRACTOR employees including the collection, payment and depositing of all applicable Federal, State and Local payroll taxes.
- C. Purchasing: The CONTRACTOR shall be responsible for purchasing all materials necessary to carry out all operation functions. These include but are not limited to uniforms, office and garage supplies, spare parts for maintenance and repair, and all other necessary equipment. The CONTRACTOR will be responsible for engaging third party contractors, to the extent necessary, for the provisions of services outlined herein. CONTRACTOR will be expected to solicit bids for the best pricing and may not include additional overhead or up-charging.
- D. Revenue: The CONTRACTOR will collect and deposit revenues from the parking system with an armored car service pursuant to procedures established by the City. Should any monies collected by the CONTRACTOR be lost, stolen, unaccounted for or otherwise removed from the custody and control of the CONTRACTOR prior to its deposit in the City's approved bank account, the CONTRACTOR shall deposit a like sum of money in the City's bank account within ninety-six (96) hours of such loss, theft or removal. Should said loss, theft or removal be insured or otherwise secured by the CONTRACTOR, any payments made to the City on account thereof shall, if appropriate, be reimbursed to the CONTRACTOR. The CONTRACTOR will be liable for all mismanagement of funds by its employees or agents.
- E. Reporting: The CONTRACTOR will ensure proper accountability and internal control of all monies collected and provide financial reports on a weekly basis or as requested. The CONTRACTOR will maintain accurate records, reporting all operational disbursements. The CONTRACTOR's on-site Manager shall compile, prepare and deliver each month to the City a monthly, summary report of all operations. The monthly report shall include comprehensive data for each facility, the on-street payment machine system (IPS), the permit system, the event parking services, and comprehensive overall parking operation. The report will be a key tool that the City and CONTRACTOR will utilize to monitor the delivery of parking services. The City and CONTRACTOR will meet on a monthly basis to review the reports.
- F. Security: The CONTRACTOR will provide security personnel either as direct employees or through a third-party contractor. CONTRACTOR will cooperate with the Stockton Police Department as needed to deter undesirable activity at the facilities or that may negatively impact parking operations.
- G. Complaints: The CONTRACTOR shall respond to public complaints regarding parking management services within twenty-four (24) hours after receipt of the complaint. In the event a report is received alleging an employee of the CONTRACTOR was discourteous, belligerent, profane, or in any way intimidating,

the CONTRACTOR will notify the City within seven (7) days of the date of the report, outlining the details of the incident and actions taken to address the incident.

4.2 Off-Street Parking Management Services

Management and operational services to be provided by the CONTRACTOR for the off-street facilities include the following:

- A. General Maintenance: CONTRACTOR will provide general housekeeping and cleaning services based upon daily, weekly, monthly, and annual check lists acceptable by the City to include, but not be limited to, emptying of litter containers, removal of litter, cleaning of stairwells, sweeping of parking facilities, cleaning interior of elevator cabs, cleaning of signage, windows, parking equipment, graffiti removal, re-lamping of light fixtures, and gate maintenance.
- B. Landscaping: CONTRACTOR will provide landscaping services including pruning vegetation as required, and cleaning and disposal of all cuttings, loose vegetation, and all other garbage and debris. Removing undesirable vegetation and treating areas of undesired growth including planting beds and cracks in pavements. Replenishing of mulch and flower beds and leaf removal during spring and fall as required.
- C. Repairs: CONTRACTOR will undertake preventive maintenance and or minor/routine repair and maintenance to the area in and around the parking facilities and equipment including minor / ordinary repairs to the Payment machines and all pay equipment (beyond warranty). Note: If repairs can't be performed by the CONTRACTOR, an outside service contractor procured by the CONTRACTOR will be used to repair the equipment. Extraordinary repairs and the replacement of any equipment, restorations, and/or structural repairs to facilities is the financial responsibility of the City. City may direct CONTRACTOR to procure such services.
- D. Maintenance Services Contracts: CONTRACTOR will engage and oversee third party contractors to provide services as required, such as cleaning, facility maintenance, landscaping, elevator maintenance, security, etc.
- E. Extraordinary, non-routine maintenance expenses: Major repairs for the following will be paid by the City on an actual cash basis: structural repairs, elevators, escalators, fans, cameras, emergency intercoms, and revenue equipment not covered by service maintenance contracts. It will be the responsibility of the CONTRACTOR to monitor the equipment and ensure that it is maintained in good working condition. Capital, extraordinary, major repairs, or emergency expense items must be authorized by the City and are the financial responsibility of the City, though City may direct CONTRACTOR to procure such needs.

- F. Utilities: The City will reimburse costs for all utilities for the garages and surface lots, including water, electricity, and gas necessary to operate the facilities. It will be the CONTRACTOR's responsibility to undertake appropriate measures to reduce utility consumption and make recommendations to improve the energy efficiency of parking facilities.
- G. Revenue Collection: All revenues generated from the facilities must be deposited to the City's bank account pursuant to procedures established by the City.
 - a. The CONTRACTOR will provide armored car service to pick up and deposit daily receipts properly bagged and totaled by the CONTRACTOR.
 - b. The CONTRACTOR will provide all deposit bags and related materials for the CONTRACTOR to prepare deposits.
- H. Security: For all parking facilities, the CONTRACTOR will provide regular patrols through the facilities to deter undesirable activity or actions that may negatively impact parking operations, provide customer service and be a personnel presence to improve user comfort. These patrols may be subject to modifications based on the security needs and concerns of individual parking facilities.

4.3 On-Street And Off-Street Parking Payment machine

The City has on-street Payment Machines (IPS- MS1) which accept coin and credit cards (no bill or receipt mechanisms). These machines were purchased new and installed in early 2019. CONTRACTOR is responsible for all aspects of the operation and management of the on-street and off-street parking payment machines, including maintenance as outlined herein. The awarded CONTRACTOR will be required to supply adequate staff, as agreed to by the City, to perform the services as listed herein.

- A. Ensure that all payment machines function properly.
- B. Replace/repair any damaged payment machines as required.
- C. Ensure sign poles and pedestals are clean and upright. All CONTRACTOR employees will be required to immediately report any damaged, missing or malfunctioning payment machines and/or signage to the appropriate supervisor.
- D. Implement and follow a regular preventive maintenance schedule for all parking payment machines.
- E. Maintain a log of all complaints regarding payment machines. The log shall note date, payment machine / payment machine number, location, problem and name of the person calling in the problem, the license plate number of the vehicle, the date the CONTRACTOR checked the payment machine, the nature of the problem, and the date it was corrected.

- F. Collect and account for all revenues from all pay machines. The collection of payment machines is required to be done at least twice weekly or before the machine is 60% full (to ensure no downtime or attraction of theft), whichever is more frequent.
- G. Reprogram parking payment machines when rates or other changes are required by the City.
- H. The CONTRACTOR will be liable for any lost, stolen, unaccounted for or damaged equipment that is provided to the CONTRACTOR as inventory by the City.
- I. The City will be responsible and pay directly for any extraordinary, non-routine maintenance expenses and major repairs, additions, and/or replacements of the payment machines.

5. Tasks That Support the Deliverables

5.1 Facilities and Maintenance

Without limiting the generality of the foregoing, the Contractor shall:

- A. Inspect the entire identified facilities daily and maintain the identified facilities in a clean and presentable condition, not allowing dirt, paper or trash of any kind to accumulate on the premises. Provide receptacles for trash as needed throughout the identified facilities. Remove any obstructions from the identified facilities and surrounding property including sidewalks and driveways. Promptly eliminate any graffiti from identified facilities property.
- B. Maintain and keep in good working order the identified facilities and its equipment and make regular and frequent inspections to determine whether maintenance, repair and/or replacements are required. Contractor shall maintain agreements or have qualified employees to perform all required maintenance, repair, or replacement of facilities equipment. The cost of such agreements shall be deemed Operating Expenses. Such equipment includes elevators, gas detection system, signage, lighting fixtures, electrical systems, and HVAC. The City may assist in matters related to the maintenance, repair, or replacement of facilities equipment or structural elements of the facilities. Contractor shall perform maintenance and repair of all revenue control equipment. A listing of subcontractors performing such work for the Contractor shall be submitted each year with its annual report to the Executive Director or his/her designee.
- C. Submit and follow a maintenance schedule approved by City and incorporated herein.
- D. Replace all equipment, materials and supplies worn out or expended in the operation or maintenance of the facilities. For expenses in excess of

\$5,000, prior written approval of the Executive Director or his/her designee is required. For expenses in excess of \$2,000, prior verbal approval of the Executive Director or his/her designee is required. The cost of all such replacements shall be deemed Operating Expenses.

- E. Make no alteration and/or addition to the identified facilities or its equipment without the written approval of the Executive Director or his/her designee.
- F. Replace all materials, equipment, and supplies stolen or vandalized. The cost of such replacement shall be an operating cost provided a police report is filed and the replacement is not covered by any insurance policy.
- G. Permit inspections of the identified facilities by the Executive Director or his/her designee(s), and/or a parking consultant hired by the Executive Director or his/her designee. The City shall bear the full cost of any such inspection. A copy of any recommendations resulting from an inspection shall be provided to the Contractor.

5.2 Policies

Without limiting the generality of the foregoing, the Contractor shall:

- A. Accommodate and abide by existing parking agreements.
- B. Maintain a Safety Action Plan for the employees of the identified facilities. Such plan shall include all Material Safety data Sheets (MSDS) for all chemicals in the identified facilities.
- C. Prohibit smoking by employees in offices, booths, lobbies, and parking areas visited by the public.
- D. Comply with all written directive(s) of the Executive Director or his/her designee.

5.3 Capital Projects

Capital projects are defined as repairs, replacements or upgrades which maintain or increase the value of the facilities and/or operation which meet or exceed a dollar limit established by the Executive Director or his/her designee.

- A. Contractor shall not be responsible for capital projects.
- B. Annually, Contractor shall submit descriptions and estimates for purchases/projects recommended during the next fiscal year and a request that the City budget funds, therefore. Such recommendations will be included with the annual budget submission.

- C. The Executive Director or his/her designee shall have sole authority to determine what repairs, replacements, or upgrades are capital projects. In the case of a capital project, the Executive Director may, at his/her sole discretion, direct City personnel to make the necessary repair or provide the necessary replacement, or upgrade at the City's expense, authorize a private contractor to make the necessary repair or provide the necessary replacement or upgrade at City's expense or authorize the Contractor to make the necessary repair or provide the necessary replacement or upgrade.
- D. The Executive Director or his/her designee may request contractor to act as the City's procurement agent to solicit quotes and negotiate pricing with select vendors. Contractor shall secure at least three (3) qualified bids for the City's records, as well as a written recommendation on the preferred vendor. The final decision and expense reside with the City.
- E. If it is determined that the capital project is the result of negligence on the part of the Contractor, the Contractor shall bear all costs associated with the capital projects. A third party, in such cases, mutually agreeable to both the Executive Director or his/her designee and the Contractor, shall make determination of negligence and shall provide written notice to the Parking Authority and Contractor.

5.4 Accounting and Recordkeeping

Without limiting the generality of the foregoing, the Contractor shall:

- A. Maintain complete records showing all revenue collected and all expenditures made in connection with the operation of the identified facilities along with such supporting data and documents. Such books and records shall be kept in such a manner as to make them easily reconcilable with the reports and forms to be submitted to the Executive Director or his/her designee by the Contractor. The Executive Director and his/her authorized representative(s) shall have the right at any time to examine the records. Logs, data, and documents kept by the Contractor regarding the operation and maintenance of the identified facilities.
- B. Maintain records by facility on a monthly basis, as well as summarized by business type (ex. Monthly permits, transient, event, etc.).
- C. Be held responsible for the conduct of proper revenue control procedures and for the preparation and submission of reports associated with procedures. The Contractor shall:
 - 1. Take a daily inventory of automobiles in each identified facility.
 - 2. Use non-repeating, consecutively numbered tickets/receipts in sequence.

- D. Contractor shall keep a log of all tickets/receipts including quantity, color, prefix code and serial numbers of tickets/receipts to be used by Contractor at the identified facilities.
- E. Prepare a Daily report and Revenue Control Report for each 24-hour period, beginning with the time the daily inventory is completed. A copy of each daily Report shall remain on site for a period of no less than three (3) years. The Daily Report shall reflect all financial transactions related to the identified facilities operation for a specified period. The Daily Report shall include:
- The number of tickets issued during the specified period
 - Number and extended value of tickets collected
 - Value and source of other revenue including deposits
 - Total gross revenue
 - Any validations
 - Reconciliation of tickets and revenue
 - Number of unaccounted tickets
 - Number of voided tickets with reasons for voiding
 - Fee computer totals including amount of all transactions
 - Amount deposited to bank
 - Signatures of preparer and Manager

After each Daily Report has been prepared and verified by the Manager, the original copy, along with any tickets, receipts, journal tapes, copies of deposit forms, etc. shall be bundled and identified with the date of the report.

An electronic log of all Daily Reports shall be kept by Contractor. City shall always have access to review log.

A Deposit Log/Report shall be completed by the Manager for each 24-hour period for which a Daily Report is completed. The Contractor is required to make occasional checks, at least once every month, to verify that the deposits have been reconciled to the Daily Reports and deposit processes have been followed properly. Any found variance or discrepancy shall be reported to the City immediately.

The Contractor is responsible for the safe storage of all revenue control and cash handling documentation.

5.5 Budget

- A. The Contractor shall, on or before each February 1st, submit to the Executive Director or his/her designee an operating budget for the next fiscal year (July 1 to June 30). The Contractor shall, if necessary, submit a request for a revised

operating budget for any fiscal year if, in the reasonable opinion of the Contractor, operating expenses will vary more than 10% from those originally contained in the operating budget. Explanation of variances shall be included as part of any request for a revised operating budget. Operating expenses in excess of 10% of the operating budget shall be the sole responsibility of the Contractor and shall not be a reimbursable or authorized operating expense unless approved in writing by the Executive Director or his/her designee.

B. Deliver to the Executive Director, by September 1st of each year, an Annual Report in a form approved by the Executive Director or his/her designee. The Executive Director may direct the Contractor to change the format of the report at any time. A copy of the Annual Report shall be on site at the identified facilities for a period of no less than three (3) years. The Annual Report shall reflect the previous fiscal year and shall contain as a minimum:

- Review of past fiscal year, including current business trends,
- Listing of contracts to maintain the identified facilities,
- Accomplishments for the year,
- Listing of any desired objectives for current year and future years,
- 5-year future budget projections
- 5-year future capital improvement recommendations, including budgetary cost estimates.

C. Contractor shall prepare and submit the following reports and statements ("Financial Reports"), which reports shall be on a cash, modified cash, or modified accrual basis and not a combination of the foregoing. The Financial Reports shall be submitted on the 20th day of each month for the previous month. The Financial Reports shall include the following:

- Balance Sheet
- Actual vs. Budget Operating Statement
- Accounts Receivable Aging Report
- Cash Receipts Detail, "Monthly Cash Summary"
- Current Month General Ledger
- Prior Month Bank Reconciliation
- Monthly and year-to-date results for each facility and summary of the overall operation, submitted in Excel format.

D. Contractor shall submit statements of net position, cash flows, and revenues and expenditures, and changes in fund balance for its prior fiscal year, audited by independent certified public accountants, no later than September 1 of each year. In addition, upon written notice to Contractor, City may cause an audit to be made of all Gross Receipts, Operating Expenses (including, without limitation, Sales Tax, if any) and all of Contractor's financial affairs with respect to this agreement.

All reports and statements delivered under Section 5.5 Budget, shall

follow applicable generally accepted accounting principles (GAAP).

5.6 Facilities Revenue

- A. Facilities revenue ("Revenue") shall include all monies received by or due to the Contractor as a result of Contractor's management of the identified facilities. Contractor shall not conduct its operations on a credit basis unless approved by the Executive Director. Contractor shall report all Revenue in its reports of gross revenue to the Executive Director or his/her designee.
- B. Monies recovered from any insurance company by the Contractor for damage to any Contractor property shall be excluded from Revenue. Federal, state, county, municipal sales tax, or other taxes separately stated and collected from identified facilities patrons now or hereafter levied or imposed shall also be excluded from Revenue. No deductions shall be allowed from Revenue for the payment of any franchise taxes of fees levied on the Contractor by another party.
- C. All Revenue shall be deposited in a federally insured bank account established by the Contractor in the State of California. The Executive Director or his/her designee shall be advised by the Contractor of any changes in the location of the account. Contractor shall provide receipts for the deposit of all Revenue to the Executive Director or his/her designee.
- D. The Contractor shall deposit all Revenue within twenty-four (24) hours of receipt. Revenue shall not be used to make up any deficiencies in the Contractor's change fund. Checks or money orders accepted on behalf of the City by the Contractor may be made payable to the Contractor.
- E. If any Revenue is misplaced or lost while in the custody of the Contractor, the Contractor shall report the missing or lost money to the Executive Director or his/her designee within twenty-four (24) hours after the occurrence. The Contractor, at no expense to the City, shall replace the amount of Revenue misplacements or loss in full within fourteen (14) days unless the Executive Director or his/her designee and the Contractor agree to a longer period. The amount of missing or lost Revenue shall be determined by using journal tapes, receipts, counters, and other identified facilities equipment. If a dispute arises in the amount of misplaced or lost Revenue, the Executive Director shall determine how much is due to the City. The City may investigate any incident of misplaced or lost Revenue.
- F. If any Revenue is stolen, the Contractor shall notify the police immediately after the theft is discovered. Contractor shall also notify the Executive Director or his/her designee no later than twenty-four (24) hours after the Police have been notified. Contractor shall file a claim with the appropriate insurance carrier allowing the City to recover the amount of identified facilities revenue stolen. The Executive Director or his/her designee may investigate any incident of theft.
- G. Contractor is authorized to deduct its monthly Operating Expenses and Management Fee from Revenues collected to the extent sufficient. Operating

expenses in excess of 10% of the operating budget shall be the sole responsibility of the Contractor and shall not be deducted from Revenues collected unless pre-approved in writing by the Executive Director or his/her designee.

5.7 Operating Expenses

The City shall reimburse the Contractor for approved operating expenses. "Operating Expenses" shall refer to all direct costs incurred by the Contractor and approved by the Executive Director in connection with the Contractor's management of the identified facilities. In general, operating expenses shall include all costs except for debt service, property taxes, Contractor change or petty cash funds, and capital projects. Operating expenses shall include, but shall not be limited to:

- A. Wages (salary and fringe benefits including Social Security, Unemployment Insurance and Worker's Compensation) of all on-site personnel employed by the Contractor.
- B. Cost of all contractual services including security personnel required for the safe and efficient operation of the identified facilities, uniforms, etc.
- C. Taxes, excluding property taxes, franchise taxes or taxes owned by the Contractor as a result of income from the operation of the identified facilities.
- D. Utilities such as electric, telephone, water, sewage, storm water, etc.
- E. Any license fees, permit fees, and special government assessments such as urban forestry, storm water management, street lighting, etc.
- F. Cost of insurance, except for liability insurance, which is reimbursed through the Management Fee. The cost of any deductible is not an operating expense unless approved by the Executive Director.
- G. Actual janitorial, office, and parking supplies. (Mark-up is prohibited.)
- H. Refunds provided to identified facilities' patrons.
- I. Routine preventive maintenance, general maintenance and repairs to the identified facilities including line striping, parking equipment and other identified facilities equipment and fixtures. Work performed in excess of the dollar limits previously established in the Agreement shall have the prior approval of the Executive Director in order to qualify as an operating expense.
- J. Management Fee.
- K. Cost of operating equipment approved by the Executive Director.
- L. Any surcharges, handling fees, processing fees.
- M. Other items approved by the Executive Director.

- N. Operating Expenses shall not include any interest, penalties or service fees charged to the Contractor as a result of the Contractor's failure to comply with federal, state, or local laws and/or regulations or to pay just debt in a timely fashion.

6. Internal and External Standards and Guidelines

6.1 Contractor shall observe and comply with any and all requirements of the constituted public authorities and with all applicable federal, state or local statutes, ordinances, regulations and standard rules, including by way of example, but not of limitation, all general rules and regulations promulgated from time to time by the Executive Director.

6.2 Contractor shall covenant and agree that it will take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it. Contractor shall not divert or cause any business to be diverted from the facilities by referral or any other method.

6.3 Contractor shall operate the facilities in a manner necessary, as determined by the Executive Director or his/her designee, to ensure adequate support for events or special activities taking place in the area. Such support shall include participation in validation programs and/or special parking rates approved by the City.

6.4 The Contractor shall do all things necessary, except those things expressly reserved to the City, to operate the identified facilities in a proper, efficient and economical manner and to promote the business of the identified facilities. Without limiting the generality of the forgoing, the Contractor will:

- A. Comply with applicable provisions of the City's Municipal Code.
- B. Acquire and keep current all licenses required for the conduct of its business.
- C. Furnish proper, safe, efficient, and courteous service on an adequate, fair, equitable, and impartial basis to those authorized by the City to use the identified facilities.
- D. Exercise such control as it deems reasonably necessary for the orderly, safe, sanitary, and secure use of the identified facilities and to prevent or discourage disorderly conduct, breach of peace, public or private nuisances, lettering, riots, destruction, and damage to public or private property, personal injury of annoyances, molestation, illegal acts and violations of laws, regulations, ordinances, and rules of the City in and about the identified facilities.
- E. Permit no free parking in the identified facilities by the general public unless specifically directed to do so in writing by the Executive Director or his/her designee. Nothing shall be construed to prohibit free parking of vehicles in the identified facilities where necessary in connection with required operation, maintenance, repair, or replacement work on or in the identified facilities or any of its equipment, to

comply with any agreement between the City and another party, or in connection with any inspection by the City- or authorized agents of the Executive Director or his/her designee.

- F. Provide all necessary security in the identified facilities. Any incident or accident occurring within the identified facilities or on identified facilities property shall be recorded in a written report. Copies of all incident/accident reports shall be sent to the Executive Director by the close of the next business day. The cost of any security subcontract shall be deemed an Operating Expense.
- G. Permit the Executive Director or his/her designee or invitees of the Executive Director or his/her designee access to any and all areas of the identified facilities at any time without cost.
- H. Submit all required reports, forms, and documents to the Executive Director or his/her designee within the time frames established in this Agreement.
- I. Prior to the Contractor's management of the identified facilities, conduct a joint inventory of equipment on hand at the identified facilities including office equipment, revenue control equipment and other cleaning and operating equipment. Items listed on the joint inventory list remain the property of the City entrusted to the Contractor for use, maintenance, and care.

At the time of termination of this Agreement, all equipment listed on the joint inventory list shall be reconciled and the City shall be reimbursed the full and complete costs for all items missing or damaged beyond normal wear and tear.

6.5 Contractor will:

- A. Not modify and/or alter any equipment, area, space or structural component of identified facilities without the written approval of the Executive Director or his/her designee.
- B. Prohibit displaying or distributing any advertising on or within the identified facilities without written approval from the Executive Director or his/her designee.
- C. Not assign, hypothecate, transfer, or encumber the management of the identified facilities to another person or entity.
- D. Not conduct from or on the premises, any business or any commercial operation not authorized by the Executive Director or his/her designee.

7. Criteria of Acceptance for Deliverables

- A. The City is authorized to promulgate rules, policies, procedures and regulations concerning the operation and use of the identified facilities. No such rule, policy,

procedure or regulation shall go into effect until ten (10) calendar days after a copy thereof has been served upon the Contractor.

- B. Contractor shall develop and recommend to the Executive Director all necessary equipment, policies, procedures, scheduling, improvements, and operating methods to be used at the identified facilities. Such recommendations shall be submitted to the City in writing for approval prior to the commencement of the Contractor's management of the identified facilities.
- C. The Executive Director shall have the sole right to approve all such recommendations and, by written notice to Contractor, make changes to the recommendations. The Executive Director shall also have the sole authority to alter any such previously approved recommendation at any time during the term of this Agreement by notifying the Contractor in writing.
- D. Contractor agrees to execute the Director's directives in all matters related to the operation of the identified facilities including, but not limited to, parking fees, operating procedures, audits, security, traffic control, graphics, hours of operation, percentage of monthly and daily patrons, terms and conditions of monthly and daily space rentals, validations, location and priority of space assignments, space markings, employee uniforms, Contractor's personnel assigned to the identified facilities and customer service.
- E. CONTRACTOR will Maintain and repair the identified facilities and its equipment in a manner satisfactory to the City and keep the identified facilities and its equipment in a clean and orderly condition at all times.
- F. Contractor shall provide necessary maintenance appropriate for the identified facilities with suitable care for landscaping, aesthetics, architectural, mechanical, electrical, and other related aspects and elements in a manner consistent with the recommended maintenance schedule approved by City, and those maintenance and treatment procedures specified by the manufacturer or supplier of identified facilities equipment.
- G. Contractor may use any equipment that belongs to the City and is on-site at the identified facilities. Title to this equipment shall remain with the City. Contractor may also use equipment purchased by the Contractor on behalf of City.
- H. Use of any equipment by Contractor shall be at Contractor's sole risk and Contractor shall protect and indemnify the City against all liability and said use. Expendable supplies on hand at the facilities or provided to the Contractor during the term if this Agreement shall be made available at no cost to the Contractor.

8. Notices

Pursuant to Exhibit C – General Terms and Conditions, Paragraph 15 – Notices, the mailing address for all required notices is as follows:

Contractor: _____

City: City of Stockton
Attn: City Manager
425 N. El Dorado Street
Stockton, CA 95202

9. Option to Renew.

The term of the Agreement may be extended up to two, three-year additional terms by a written amendment executed by both parties. However, the total term of the Agreement including the extended terms shall not exceed eleven (11) years.

EXHIBIT B INSURANCE

Insurance Requirements for Professional Services

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability**: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

(Not required if Contractor provides written verification it has no employees)

4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limit no less than **\$2,000,000** per occurrence or claim, \$2,000,000 aggregate. (If Claims-made, see below.)

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater. No representation is made that the minimum insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

Limits of Insurance

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City of Stockton.**

Waiver of Subrogation

Contractor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies

regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Contractor, its employees, agents and subcontractors.

Self-Insured Retentions

All Self-insured retentions must be disclosed to Risk Management for approval and shall not reduce the limits of liability. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Stockton.

Claims Made Policies (note – applicable only to professional liability)

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not ***replaced with another claims-made policy form with a Retroactive Date*** prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of ***five (5) years*** after completion of contract work.

Verification of Coverage

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Contractor shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its declarations page(s) and endorsement page(s) for each of the required policies.

Subcontractors

Contractors shall require and verify that all subcontractors, or other parties hired for this work, purchase and maintain coverage for indemnity and insurance requirements as least as broad as specified in this agreement to the extent they apply to the scope of the subcontractor's work with the same certificate of insurance requirements and naming as additional insureds all parties to this contract. Contractor shall include the following language in their agreement with Subcontractors: *"Subcontractors hired by Contractor agree to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under the contract documents and provide a valid certificate of insurance and the required endorsements included in the agreement as proof of compliance prior to commencement of any work and to include this same requirement for any subcontractors they hire for this work. A copy of the owner contract document indemnity and insurance provisions will be furnished to the subcontractor upon request."* Contractor shall provide proof of such compliance and verification to the City upon request.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder Address

Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton Attn: City Risk Services
400 E Main Street, 3rd Floor – HR
Stockton, CA 95202

EXHIBIT C GENERAL TERMS AND CONDITIONS

1. **Goods, Equipment and Services.**

Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in Exhibit A of the Agreement. Contractor shall provide said services at the time, place and in the manner specified in Exhibit A of the Agreement.

2. **City Assistance, Facilities, Equipment and Clerical Support.**

Except as set forth in Exhibit A, Contractor shall, at its sole cost and expense, furnish and maintain all facilities and equipment that may be required for furnishing services pursuant to this Agreement. If applicable, City shall furnish to Contractor only the facilities and equipment listed in Exhibit A to the Agreement.

3. **Compensation.** City shall pay Contractor for services rendered pursuant to this Agreement as described more particularly in Exhibit A and Exhibit E to the Agreement.

3.1 Invoices submitted by Contractor to City must contain a brief description of work performed, time spent and City reference number. Within thirty (30) days of receipt of Contractor's invoice, City will review invoice, and if acceptable make payment on approved invoice.

3.2 Upon completion of work and acceptance by City, Contractor shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Contractor fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work is accepted by the City.

4. **Sufficiency of Contractor's Work.**

All Contractor services, work, and deliverables shall be performed in a good and workmanlike manner with due diligence in accordance with the degree of skill normally exercised by similar contractors supplying services and work of a similar nature, and in conformance with applicable laws, codes and professional standards. Contractor's work shall be adequate and sufficient to meet the purposes of this Agreement.

5. **Ownership of Work.** All reports, work product, all other documents completed or partially completed by Contractor or its approved subcontractors, in performance of this Agreement, and if applicable, drawings, designs, and plan review comments shall become the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor and its approved subcontractors agree to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of

the work under this Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Contractor and its approved subcontractors shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

6. Timeliness. Time is of the essence in this Agreement. Further, Contractor acknowledges that the failure of Contractor to comply with the time limits described in Exhibit A and Exhibit F may result in economic or other losses to the City. Contractor agree to be liable for any direct losses the City may incur but in no event shall Contractor be liable for any consequential or indirect damages.

7. Changes. Both parties to this Agreement understand that it may become desirable or necessary during the term of this Agreement for City to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with City and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work. Until the amendment is so executed, City will not be responsible to pay any charges Contractor may incur in performing such additional services, and Contractor shall not be required to perform any such additional services.

8. Amendment. No variation of the terms of this Agreement shall be valid unless an amendment is made in writing and signed by both parties.

9. Contractor's Status.

9.1 In performing the obligations set forth in this Agreement, Contractor shall have the status of an independent contractor and Contractor shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Contractor are its agents and employees and are not agents or employees of City. Contractor by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of City. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the City. No agent, officer or employee of the City is to be considered an employee of the Contractor. It is understood by both Contractor and City that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

9.2 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect to the physical action or activities of Contractor in fulfillment of this

Agreement. Contractor has control over the manner and means of performing the services under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

9.3 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

9.4 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

10. Subcontractor.

10.1 Subcontractors shall not be recognized as having any direct or contractual relationship with City. Contractor shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Agreement. Subcontractors will be provided with a copy of the Agreement and be bound by its terms. Contractor is responsible to City for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

10.2 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by Contractor.

10.3 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's personnel.

11. Termination.

11.1 Termination for Convenience of City. The City may terminate this Agreement at any time by mailing a notice in writing to Contractor. The Agreement shall then be deemed terminated, and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for the work actually completed at the time the notice of termination is received.

11.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

11.3 **Funding- Non-Appropriation.** It is mutually understood between the Parties that payment to the Contractor for performance shall be dependent upon the availability of appropriations by the City Council for the purposes of this Agreement. No legal liability on the part of the City for any payment may arise under this Agreement until funds are made available and until the Contractor has received funding availability, which will be confirmed in writing. If funding for any fiscal year is reduced or deleted, or if the City loses funding for any reason, the City, in its sole discretion, shall have the option to either (a) cause this Agreement to be canceled or terminated pursuant to applicable provisions of the Agreement; or (b) offer to amend the Agreement to reflect the reduced funding for this Agreement.

12. Non-Assignability. The Contractor shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Contractor shall be solely responsible for reimbursing subcontractors.

13. Indemnity and Hold Harmless. To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify the City of Stockton, its officers, employees, agents, and volunteers, against any and all third-party liability, claims, losses, damages, or expenses, including reasonable attorney's fees to the extent, arising from all acts or omissions of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

14. Insurance. During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached Exhibit B to this Agreement and shall otherwise comply with the other provisions of Exhibit B to this Agreement.

15. Notices. All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed in Exhibit A to this Agreement.

16. Conformance to Applicable Laws. Contractor shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Contractor shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

17. Licenses, Certifications and Permits. Prior to the City's execution of this Agreement and prior to the Contractor's engaging in any operation or activity set forth in this Agreement, Contractor shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Contractor covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement. Such licenses, certificates and permits shall be maintained in full force and effect during the term of this Agreement.

18. Records and Audits.

Contractor shall maintain all records regarding this Agreement and the services performed for a period of three (3) years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit. To the extent Contractor renders services on a time and materials basis, Contractor shall maintain complete and accurate accounting records, in a form prescribed by City or, if not prescribed by City, in accordance with generally accepted accounting principles, such records to include, but not be limited to, payroll records, attendance cards, time sheets, and job summaries.

19. Confidentiality. Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

20. Conflicts of Interest. Contractor covenants that other than this Agreement, Contractor has no financial interest with any official, employee or other representative of the City. Contractor and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Contractor's services under this Agreement. If such an interest arises, Contractor shall immediately notify the City.

21. Waiver. In the event either City or Contractor at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation. No payment, partial payment, acceptance, or partial acceptance by City shall operate as a waiver on the part of City of any of its rights under this Agreement.

22. Governing Law. California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the Federal District Court of California, Eastern District, Sacramento Division.

23. No Personal Liability. No official or employee of City shall be personally liable to Contractor in the event of any default or breach by the City or for any amount due Contractor.

24. Severability. If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or city statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

25. Non-Discrimination. During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state, or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its officers, employees, agents, representative or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the City's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12990 (et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulation or Code of Federal Regulations. Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC Section 2000d). <http://www.dol.gov/oasam/regs/statutes/titlevi.htm>. The City requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

26. Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, terrorism, fire, flood, strikes, war, epidemics, pandemics, shortage of power or other acts or causes reasonably beyond the control of that party. The party experiencing the force majeure event agrees to give the other party notice promptly following the occurrence of a force majeure event, and to use diligent efforts to re-commence performance as promptly as commercially practicable.

27. Taxes and Charges. Contractor shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of the Contractor's business.

28. Cumulative Rights. Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative of all other rights and remedies to which may be legally entitled.

29. Advice of Attorney. Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

30. Heading Not Controlling. Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

31. Entire Agreement, Integration, and Modification.

31.1 This Agreement represents the entire integrated agreement between Contractor and the City; supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by a written Amendment signed by the Contractor and City Manager.

31.2 All Exhibits to this Agreement and this Agreement are intended to be construed as a single document.

32. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

33. Authority. The individual(s) executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

EXHIBIT D

PROFESSIONAL SERVICES SPECIAL TERMS AND CONDITIONS

1. Definitions. The following words and phrases have the following meanings for purposes of this Agreement:

1.1 "Services" means, collectively, the services, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

1.2 "Deliverable" means quantifiable goods or services that will be provided upon completion of a project. A deliverable is any tangible material, work or thing delivered by one party to the other, including associated technical documentation. A deliverable can be tangible or intangible parts of the development process, and often are specified functions or characteristics of the project.

2. General. The following terms and conditions are applicable for the Professional Services only. The special conditions shall be read in conjunction with the Standard Agreement, General Terms and Conditions ("GTC") Exhibit C, and all other Exhibits identified in the Standard Agreement.

2.1 Where any portion of the GTC is in conflict to or at variance with any provisions of the Special Conditions of the Agreement, then unless a different intention stated, the provision(s) of the Special Conditions of the Agreement shall be deemed to override the provision(s) of GTC only to the extent that such conflict or variations in the Special Conditions of the Agreement are not possible of being reconciled with the provisions of the GTC.

2.2 In the case of modification of a part or provision of the GTC, the unaltered part or provision, or both shall remain in effect. The Special Conditions shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the GTC.

3. Time for Performance.

3.1 Contractor shall perform the services according to the schedule contained in Exhibit F.

3.2 Timeliness of Performance i) Contractor shall provide the Services, and Deliverables within the term and within the time limits required under this Agreement, pursuant to the provisions of Exhibit A and Exhibit F. ii) Neither Contractor nor Contractor's agents, employees nor subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

4. Standard of Performance

In addition to Exhibit C, Section 4 and 17, Contractor agrees as follows:

4.1 Contractor's Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. Contractor shall comply with the profession's standard of performance, applicable laws, regulations, and industry standards. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Agreement.

4.2 Contractor acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City and with respect to that information, Contractor agrees to be held to the standard of care of a fiduciary. Contractor shall assure that all services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor must provide copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Using Agency and delivered in a timely manner consistent with the requirements of this Agreement.

4.3 If Contractor fails to comply with the foregoing standards, Contractor must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the City does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Contractor either under this Agreement, at law or in equity.

5. Compensation

5.1 In addition to Section 3 Compensation in Exhibit C – GTC, the Contractor shall be compensated for the services provided under this Agreement as follows:

5.1.1 Contractor shall be compensated for services rendered and accepted under this Agreement and shall be paid monthly, in arrears on a not to exceed basis, based upon the rates set forth in Exhibit E attached hereto and made a part of this Agreement. Contractor may vary the compensation for each task in Exhibit E provided

that the total project compensation listed in Exhibit E and the Standard Agreement is not exceeded.

6. Personnel

6.1 None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written agreement and shall be subject to each provision of this Agreement. Contractor shall provide subcontractor a copy of this fully executed Agreement.

6.2 Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement. The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

6.3 Key Personnel: Because of the special skills required to satisfy the requirements of this Agreement, Contractor shall not reassign or replace key personnel without the written consent of the City, which consent the City will not unreasonably withhold. "key personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Agreement. The City may at any time in writing notify Contractor that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Contractor shall immediately suspend the services of the key person or persons and must replace him or them in accordance with the terms of this Agreement. A list of key personnel is found in Exhibit A, Scope of Services.

7. Reports and Information

Contractor shall at such times and in such forms as the City may require furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters are covered by this Agreement as specified in Exhibit A and Exhibit E.

8. Findings Confidential

All of the reports, information, data, et cetera, prepared or assembled by the Contractor under this Agreement are confidential and the Contractor agrees that they

shall not be made available to any individual or organization without the prior written approval of the City. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is required by applicable law or by proper legal or governmental authority, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by Contractor outside the scope of this Agreement or is rightfully obtained from third parties. Contractor shall give City prompt notice of any such legal or governmental demand and reasonably cooperate with City in any effort to seek a protective order or otherwise to contest such required disclosure.

9. Copyright

No materials, including but not limited to reports, maps, or documents produced as a result of this Agreement, in whole or in part, shall be available to Contractor for copyright purposes. Any such materials produced as a result of this Agreement that might be subject to copyright shall be the property of the City and all such rights shall belong to the City, and the City shall be sole and exclusive entity who may exercise such rights.

10. Deliverables

Contractor shall prepare or provide to the City various Deliverables. "Deliverables" include work product, such as written reviews, recommendations, reports and analyses, produced by Contractor for the City. The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Contractor has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Contractor of its failure. If Contractor does not correct the failure, or if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement. Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Contractor of its commitments under this Agreement.

EXHIBIT E COMPENSATION SCHEDULE

The Contractor shall be compensated for the services identified in Exhibit A, Exhibit C, and Exhibit D to this Agreement as follows:

1. OPERATOR COMPENSATION

1.1 The City will pay to CONTRACTOR annual compensation for the management of the parking operation as specified in Exhibit A Statement of Work. Contractor shall be paid for its management of the City's parking operation including all facilities and on-street payment machines a fixed management fee on this Agreement paid in twelve equal monthly installments, the following:

Year	Duration	Not to Exceed Annual Amount
1.	May 1, 2020 through April 30, 2021	\$302,508
2.	May 1, 2021 through April 30, 2022	\$311,584
3.	May 1, 2022 through April 30, 2023	\$320,931
4.	May 1, 2023 through April 30, 2024	\$330,559
5.	May 1, 2024 through April 30, 2025	\$340,476
Extension 1.	May 1, 2025 through April 30, 2028	\$350,690
Extension 2.	May 1, 2028 through April 30, 2031	\$361,211

1.2 The "not to exceed" amount includes all payments to be made pursuant to this Agreement, including City approved reimbursable expenses, if any. Nothing in this Agreement requires the City to pay for work that does not meet the Standard of Performance identified in Exhibit D section 4 or other requirements of this Agreement.

1.3 Contractor may include one-time start-up costs in the first year not to exceed \$29,200 in the operating budget as approved, in advance and in writing by City. CONTRACTOR will provide a list of start-up costs deemed necessary for transition and commencement of operation. The proposed start-up costs will be detailed and submitted to City, in advance of expenditure.

1.4 Contractor shall invest \$50,000 during the first year in improvements to the operations such as equipment, software, and/or signage as approved in advance, by City in writing. City shall be the final decision in directing where the money will be invested within the operation. Any software, equipment, property, etc. purchased with the \$50,000 investment becomes the sole property of the City.

2. COST OF OPERATIONS

2.1 City will reimburse CONTRACTOR for those direct labor costs and direct expenses that are reasonably necessary for the efficient operation of the Facilities through the City-approved annual operating budget. Reimbursement of direct expenses

will be only to the extent that same are actually paid or incurred by CONTRACTOR in the performance of its services for the Facilities. CONTRACTOR may not add mark up to any invoice.

2.2 Such operating expenses will include the aggregate of salaries and wages, payroll taxes, workers' compensation insurance, health, welfare and pension, and retirement benefits and other funds that CONTRACTOR is required to pay in accordance with governmental regulations, a Collective Bargaining Agreement or CONTRACTOR's employee benefits program for the personnel exclusively engaged in the management and operation of the Facilities; supplies; signs; general facilities maintenance; and related fees; and all other necessary and reasonable direct costs related to the parking services provided.

2.3 Notwithstanding the above, CONTRACTOR will invoice City for salaries at the overtime premium rate only when overtime premium services have been specifically authorized in writing in advance by City. If an open position must be temporarily filled by CONTRACTOR with a fully trained parking attendant not regularly assigned to the Facilities and the attendant's prior work schedule requires payment at an overtime premium rate, CONTRACTOR will compensate the attendant at the appropriate rate of pay, but will invoice City only at the attendant's regular straight-time rate of pay.

2.4 Operating expenses will not include any payments to affiliates of CONTRACTOR exceeding an amount that would have been paid to a third-party for similar services (City will require 3 bids for services, at their discretion), nor will operating expenses include CONTRACTOR's general overhead expense or any of the following:

- a. Administrative and related costs and expenses incurred in the operation of the Facilities or other operations of CONTRACTOR, as they are incurred in the general management of the affairs of the Facilities or CONTRACTOR's other operations, including the corporate monitoring of the operation and management of the Facilities;
- b. Maintenance of the general books and records of CONTRACTOR;
- c. Office supplies and equipment used by CONTRACTOR that are not used exclusively for the Facilities and local operation;
- d. Payroll markups by CONTRACTOR, telephone, computer, data processing fees (excluding payment machine or mobile payment), administrative mark-ups and/or travel expense related to the management of the Facilities (except for the direct cost of telephone located at the Facilities); and
- e. The cost of compensation for any personnel above the level of Garage Manager working at the Facilities in any capacity other than as a full or part-time employee with direct responsibility for the Facilities. While corporate oversight is required and expected, the overhead cost of such corporate management should be included as part of the management fee.

2.5 CONTRACTOR will not be responsible for providing marketing material used to market the services provided at the Facilities. CONTRACTOR will comply with marketing efforts of City.

2.6 CONTRACTOR will not install any signage or modify any existing signage without City's prior written consent, which City may give, deny or condition in City's sole discretion. Any advertising and proceeds thereof that the City deems in its best interest is the sole revenue of the City.

2.7 The following items are not reimbursable within the Operating Budget, but rather will be included in the OPERATOR's management fee:

- a. CONTRACTOR's insurance.
- b. Intra-company communication and travel expense for corporate meetings/training.
- c. Recruiting expenses.
- d. Employee training.
- e. Salary or any portion of salary of any person employed, during the execution of the services above the rank of General Manager of the Stockton account employed by the CONTRACTOR.
- f. Overhead or general corporate or partnership expenses of any kind.
- g. Any and all administrative expenses beyond that of the local operation
- h. Computers, monitors, printers, accessories or other electronic devices except those provided by the City.
- i. Computer Software or maintenance except that provided by the City.
- j. Accounts payable processing fees.
- k. Accounts receivable processing fees.
- l. Payroll processing fees.
- m. CONTRACTOR taxes, as required, including business and possessory interest.

2.8 Contractor is authorized to deduct from Revenue collected each month the amount of such month's authorized Operating Expenses, Management Fee, and incentive (if any).

2.9 The Contractor shall submit to the Executive Director or his/her designee by the 15th of each month; a statement of the total Revenue collected by Contractor in the preceding month and previous months Operating Expenses, including the Management Fee. The monthly statement shall be accompanied by payment to the City of the Net Profit of the previous month. "Net Profit" is defined as Revenue less Operating Expenses, the Management Fee, and Incentive Fee, if any.

2.10 In the event Revenue during any month is exceeded by the total of Operating Expenses and the Management Fee (and incentive, as applicable), resulting in a deficit, the City shall pay Contractor the deficit within thirty (30) days after receipt of Contractor's monthly statement required pursuant to this section. If

payment is not made by City to Contractor within said 30-day period, Contractor shall have the right to: (i) offset the amount of the deficit by deduction thereof from any Net Profit due or to become due to the City; and (ii) at its option, terminate this Agreement upon written notice, without waiving or limiting any of its legal remedies (including the right to recover attorney's fees and any other expenses incurred) which Contractor may pursue to collect the amount owed.

2.11 The monthly statement shall be supported by such commercially reasonable supporting documentation as required by the instructions of Executive Director or his/her designee. The amount due the Contractor shall be the sum of all operating expenses plus the management fee minus any deductions or Penalties. The Contractor shall include sufficient documentation to support all operating expenses.

3. PENALTIES

3.1 Contractor shall be subject to penalties ("Penalties") if the City is required to pay any sum or sums or incurs any obligations or expenses because of the failure, neglect, or refusal of the Contractor to perform or fulfill any of the requirements of this Agreement. Such Penalties shall include all interest, costs (including legal fees), damages and other fees in conjunction with such sums so paid or expenses so incurred and shall be subtracted from any amount due the Contractor. Notwithstanding any contrary provision in this Agreement, the City shall give Contractor written notice of any alleged performance issue and if Contractor within 10 days of receipt of such notice cures the alleged performance issue as the Parking Authority shall reasonably determine, then no Penalties as a result of such performance issue shall be assessed against compensations due Contractor.

3.2 Contractor shall also take steps to ensure that unaccounted tickets shall be equal to or less than three percent (3%) of the total tickets issued during any one month. The number of unaccounted tickets shall be determined by adding the number of unaccounted tickets reported on the Daily Revenue Report for each day in the month and dividing that sum by the total number of tickets issued at the identified facilities for that month. If the percentage of unaccounted for tickets exceeds 3%, the Contractor agrees to deduct or have deducted the appropriate deduction amount from any amount due Contractor according to the following schedule:

<u>Percent Unaccounted</u>	<u>Penalty</u>
Up to 3%	No Deduction
3% to 5%	\$15.00 per Ticket
Over 5%	\$25.00 per Ticket

4. INCENTIVE FEE

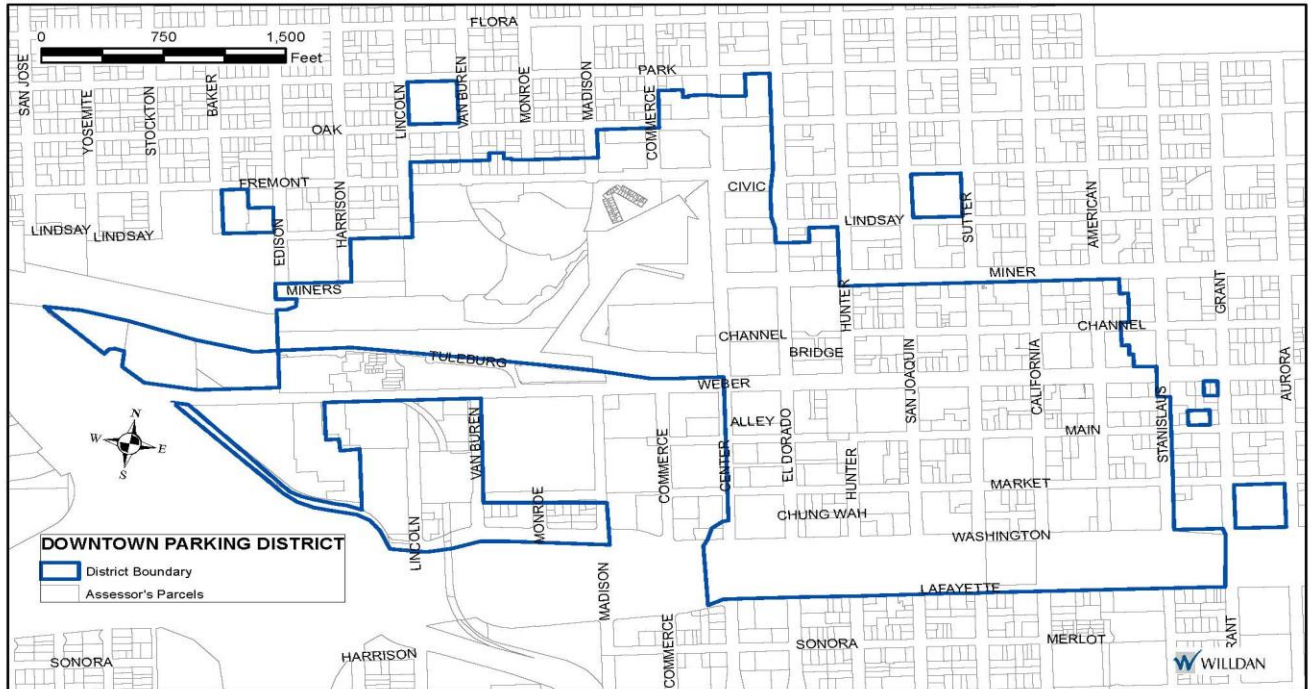
5. COMMUNITY INVESTMENT/SPONSORSHIP

The City values involvement within the Stockton Community by CONTRACTOR and as such CONTRACTOR will invest \$10,000 annually in monetary or in-kind support to not-for-profit causes within Stockton city limits. Investment is at CONTRACTOR's discretion to the extent that it meets the criteria of a not-for-profit within the Stockton City limits. Community Investment will be done so in the CONTRACTOR's name and/or by CONTRACTOR's employees. CONTRACTOR must list Community Investment each year in the annual report. Should CONTRACTOR neglect to make such investment by May 1st of each year starting in 2021, CONTRACTOR will be assessed a penalty equal to \$10,000, payable to the City.

6. INVOICE TO ADDRESS Each invoice submitted shall identify the specific task(s) listed in Exhibit A and this Exhibit, and the completed work product/deliverable for the agreed upon price listed in this Exhibit. Invoices shall be submitted to the below address:

City of Stockton Economic Development Department
Attention: Parking and Venue Manager
400 E. Main Street, 4th Floor
Stockton, CA 95202

Attachment A



Date: 12/12/2019

Attachment B

