

PARKING USE AGREEMENT

THIS AGREEMENT ("Agreement") is entered on November 13, 2018 by and among The City of San Diego hereinafter referred to as "USER" ABM Industry Groups, LLC, dba ABM Parking Services, Inc., hereinafter referred to as "ABM". In this Agreement, SCP Horton Owner 1, LLC or its successors and assigns shall collectively be referred to as "OWNER".

1. **LOCATION:** This Agreement pertains to the parking facility area, owned by OWNER and operated by ABM which is currently operated and leased by ABM and located at 324 Horton Plaza, San Diego CA 92101 hereinafter called the "Premises".

2. **TERM:** This Agreement shall commence on January 1, 2019 and terminate December 31, 2019 (the "Initial Term") and upon expiration of the Initial Term, this agreement shall automatically be extended on a month to month basis (in each case, a "Renewal Term") unless either party notifies the other in writing not less than sixty (60) days prior to the end of the then-current Initial Term or Renewal Term that the Agreement term should not be automatically extended.

3. **USE:** The Premises may be used for the parking of licensed motor vehicles by USER and USER'S employees for monthly parking. USER shall conform to all rules and regulations that ABM or OWNER dictates. Failure to abide by any rules or regulations that ABM or OWNER deems necessary may result in the towing of any vehicle(s) and/or the immediate cancellation of this Agreement. The rules and regulations include, but are not limited to:

- a. Maximum speed limit is 5MPH.
- b. Compact stalls are for compact cars only.
- c. Do not park in stalls marked, "Reserved".
- d. No parking or stopping for loading or unloading in driveways, drive aisles, etc...
- e. Observe all stop signs, traffic patterns, etc.
- f. Keep the Premises in an orderly fashion.
- g. Do not damage, destroy or vandalize any portion of the Premises.
- h. Any and all damage to the Premises caused by USER will be paid by USER.

USER acknowledges that Premises are used for the parking of visitors and tenants of the Premises. USER'S use of the Premises shall in no way interfere with this primary use.

4. **CHARGES:** USER will be charged per month for the use of the Premises as follows:

Monthly Parking: USER will be charged one hundred thirty dollars (\$130.00) per parker, per month. For the first six months of this agreement, USER will be billed for a minimum of 100 parkers after which the minimum will increase to 150

parkers. USER may have more than the minimum number of parkers. USER'S parkers will have 24-hour access to the garage.

Payment is due on the first day of the month. Payments received after the 5th of the month will be subject to a 5% late fee. Checks should be made payable to ABM Parking Services.

5. ACCESS CARDS: ABM will provide access cards at no expense to USER only for new parkers added by USER. Access cards issued as replacement for lost, stolen or damaged access cards will be subject to the standard access card fee, which is currently \$20, but may be subject to change.

6. INTERRUPTION OF SERVICE:

It is understood that ABM and OWNER does not warrant that any of the parking above will be free from interruption or diminution, and USER acknowledges that any one or more of such services may be interrupted or diminished by reason of accident or repairs, alterations or improvements necessary to be made, or by strikes or lockouts, or by reason of operation of law, or by any other causes of ABM, OWNER and/or others. However, if the number of parking spaces that USER has access to is decreased to less than the minimum, USER shall only be billed for the number of spaces made available.

7. INDEPENDENT CONTRACTOR: ABM, OWNER and USER agree that they are not to be deemed as partners or joint venturers, and that the use of the Premises by USER is as licensee. All personnel necessary for USER'S operation shall be employees of USER and not of ABM or OWNER.

8. ASSIGNMENT: USER and ABM hereby agree that this Agreement may be assigned by OWNER at any time during the Term of this agreement.

9. NOTICE: Notices, communications and changes of address pursuant to or related to this Agreement shall be deemed given if deposited with the United States Mail, registered or certified, with postage paid, addressed as follows:

TO ABM:

ABM Industry Groups, LLC,
dba ABM Parking Services
3585 Corporate Court
San Diego, CA 92123
Attn: Carlos Murrieta

TO OWNER:

SCP Horton Owner 1, LLC
10850 Wilshire Boulevard, Suite 1050
Los Angeles, CA 90024
Attn: Dan Michaels

TO USER:

The City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Karen Johnson

10. DESCRIPTIVE HEADINGS: The paragraph headings used herein are descriptive only and for the convenience of identifying the provisions hereof and are not determinative of the meaning or effective of any of the provisions of the Agreement.

11. ATTORNEY'S FEES: In the event legal action is brought to enforce this Agreement or any of its provisions, the prevailing party shall be entitled to reasonable attorney's fees and costs.

12. ENTIRE AGREEMENT: This Agreement contains the entire Agreement and understanding between ABM and USER and may be amended and changed only in writing executed by both parties.

13. GOVERNING LAW: This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.

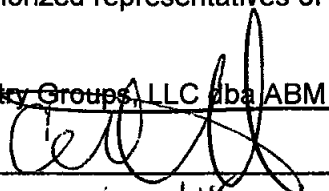
14. SURVIVABILITY: All terms and provisions of the Agreement shall be binding upon and inure to the benefit of and be enforceable by ABM, OWNER, and USER, their respective successors in interest.

15. NOT A LEASE: ABM, OWNER as well as USER acknowledge that this Agreement does not constitute a lease of the Premises.

16. TERMINATION: ABM or OWNER shall be able to terminate this Agreement with sixty (60) days written notice to USER.

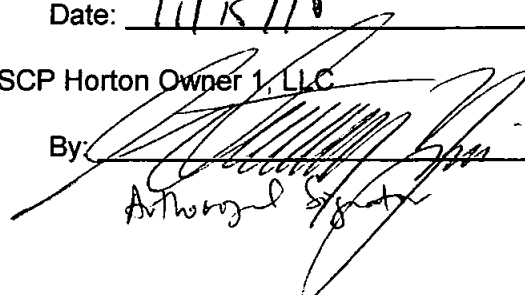
IN WITNESS HEREOF, duly authorized representatives of ABM and USER have executed this Agreement below.

ABM: ~~ABM Industry Groups, LLC dba ABM Parking Services~~

By: 

Date: 11/15/18

OWNER: SCP Horton Owner 1, LLC

By: 
Arthur J. Horton

Date: 11/27/18

USER: The City of San Diego

By: [Signature]

Date: 1/7/19

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

Date: 1/9/19

By: [Signature]

Name: Alyssa Minto

Title: Deputy Director, Planning Dept.

Approved as to form this 10th day
of January, ~~2018~~ 2019

MARA W. ELLIOTT, City Attorney

By: [Signature]

Name: Marco A. Verdugo
Deputy City Attorney

Title: _____



The City of San Diego
Item Approvals

Item Subject: Parking Use Agreement with ABM Parking Services, Inc. and SCP Horton Owner 1, LLC for City employee parking

Contributing Department	Approval Date
DOCKET OFFICE	12/10/2018
PURCHASING & CONTRACTING	12/10/2018
DEPARTMENT OF FINANCE	12/12/2018
ENVIRONMENTAL ANALYSIS	12/12/2018

Approving Authority	Approver	Approval Date
REAL ESTATE ASSETS FINAL DEPARTMENT APPROVER	THOMPSON, CYBELE	12/06/2018
CITY ATTORNEY	VERDUGO, MARCO	01/04/2019



The City of San Diego

Staff Report

DATE ISSUED: 12/6/2018

TO: Mayoral

FROM: Real Estate Assets

SUBJECT: Parking Use Agreement with ABM Parking Services, Inc. and SCP Horton Owner 1, LLC for City employee parking

Primary Contact: Karen Johnson Phone: (619) 236-6191

Secondary Contact: Cybele Thompson Phone: (619) 236-6145

Council District(s): 3

OVERVIEW:

This is a Mayoral Action to request funds for a parking use agreement to allow subsidized parking for City employees currently on the parking wait list for Civic Center Plaza and Evan Jones Parkade.

PROPOSED ACTIONS:

Authorize the Chief Financial Officer to expend funds to pay for an initial one year term of a Parking Use Agreement from the Concourse and Parking Garages Operating Fund, to ABM Industry Groups, LLC, dba ABM Parking Services for City of San Diego employee parking located at Horton Plaza, contingent upon the Chief Financial Officer furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

DISCUSSION OF ITEM:

In early August 2018, there were 381 employees on the parking pass wait list for parking at Civic Center Plaza (CCP) and Evan Jones Parkade. Staff identified an opportunity at Horton Plaza for additional parking to accommodate the employees on the wait list.

The Human Resource Department conferred with the unions and a survey was sent to the employees on the wait list to gauge their level of interest in the location. The survey also included information that the site was only guaranteed for one year, the employees would not lose their place on the wait list for CCP or Evan Jones Parkade, they would have to forfeit any unused yearly or

monthly bus/trolley passes in order to obtain the parking pass and they would be responsible for a monthly charge to be taken as a payroll deduction.

Upon reviewing the results of the survey as well as additional turnover of parking at CCP and Evan Jones Parkade, it was determined there are between 100 to 150 employees that would be interested in utilizing the parking lot at Horton Plaza.

City Strategic Plan Goal(s)/Objective(s):

Goal 1: Provide high quality public service

Objective 1: Promote a customer-focused culture that prizes accessible, consistent, and predictable delivery of services

Goal 2: Work in partnership with all of our communities to achieve safe and livable neighborhoods

Objective 4: Foster services that improve quality of life

Fiscal Considerations:

The City negotiated a lease rate of \$130 per parking space. The Parking Use Agreement requires the City to lease a minimum of 100 parking spaces for months one through six of the initial term, increasing to a minimum of 150 spaces for months seven through twelve. The City has the option to lease additional parking spaces if needed.

Based on the minimum requirement per the Agreement, the total liability for the City is \$78,000 for the first six months of the agreement, \$117,000 for the last six months for a total of \$195,000. That amount would increase if the City exercises the option to lease additional parking spaces.

The current market rate for parking Downtown is \$170 per space. The City subsidizes 75% of market rate, making the employee payroll contribution \$42.50 per month, consistent with the City's other parking garages. This would reduce the City's liability to \$87.50 from the negotiated rate of \$130.00 for each parking space an employee takes.

Environmental Impact:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

Equal Opportunity Contracting Information (if applicable):

N/A

Previous Council and/or Committee Actions:

N/A

Key Stakeholders and Community Outreach Efforts:

The key stakeholders are the employees of the City of San Diego

Cybele L. Thompson

Department Director

Ronald Villa

Deputy Chief Operating Officer